THE INQUIRY

REGARDING

THOMAS SOPHONOW

THE INVESTIGATION, PROSECUTION AND CONSIDERATION OF ENTITLEMENT TO COMPENSATION

COMMISSIONER

The Honourable Peter deC. Cory

SEPTEMBER 2001

102-01187/

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Acknowledgement

Commission Counsel conducted themselves in an exemplary manner. Richard Wolson, Q.C., Marilyn Field-Marsham and Aaron London worked diligently and well. They so organized the presentation of material and witnesses that the hearings proceeded as smoothly, fairly and efficiently as possible. They worked long and hard in the presentation of evidence. As well, they were of invaluable assistance in their reviews of the evidence and issues. All this was accomplished quickly and cheerfully. I could not have had better counsel.

Christine Walker acted as the Registrar. She organized the exhibits, ensured the security of the *in camera* material and went out of her way to be helpful from the very first day of the inquiry through the packing and shipping of the material back to Toronto. I was blessed with her assistance.

As well, all the shorthand reporters worked long hours, cheerfully and well. The transcripts were often required very quickly and they never failed to meet all the demands of counsel.

All counsel appearing at the hearing maintained a high standard. They made certain that their clients' position were well and clearly put forward and their submissions were extremely helpful.

INTRODUCTION

The Facts Giving Rise to the Inquiry, the Authorizing Order in Council, its Nature and Scope

Barbara Stoppel was a beautiful, vivacious and friendly 16-year-old. She was well liked by school friends and beloved by her family. In a season of joy and hope she was brutally killed. Murder, the most grievous of crimes, had been committed. On the 23rd of December, 1981, she was working at the Ideal Donut Shop. Sometime around 8:30 in the evening, twine was placed around her neck and she was strangled. She died a few days later at the St. Boniface Hospital. A life so full of promise was extinguished. Barbara Stoppel was the ultimate victim. Her family suffered a grievous loss and have continued to relive the tragedy through three trials and two appeals and this Inquiry.

The City of Winnipeg was understandably outraged by the murder. The media reflected that sentiment. There was extensive media coverage, not only of the crime, but also of the investigation and all the proceedings that followed it.

There was yet another victim. Thomas Sophonow was charged with the murder of Barbara Stoppel. He underwent three trials. The first was a mistrial as the jury was unable to reach a unanimous verdict. At the second and third trials, he was convicted. In each case the Court of Appeal, very properly in my view, overturned the verdict, directed a new trial and, on the last occasion, acquitted him.

From the time of his acquittal by the Manitoba Court of Appeal in 1985, Thomas Sophonow has sought exoneration. For 15 years he was thought of by his co-workers as a murderer. This opinion was shared by neighbours and many others. Truly, he bore the mark of Cain.

In 1998, the Winnipeg Police Service undertook a reinvestigation of the murder of Barbara Stoppel. On June the 8th, 2000, it announced that Thomas Sophonow was not responsible for the murder and that another suspect had been identified. On that same day, the Manitoba Government issued a news release which stated that the Attorney General had made an apology to Thomas Sophonow as he "had endured three trials and two appeals, and spent 45 months in jail for an offence he did not commit". The news release also announced that there would be a Commission of Inquiry "to review the police investigations and full court proceedings to determine if mistakes were made" and "to determine whether compensation should be provided". These actions taken by Chief Ewatski of the Winnipeg Police Service and the Justice Minister of Manitoba were courageous and commendable. They will do much to restore public confidence in the work of the police and the administration of justice.

Trials and Appeals of Thomas Sophonow

On March 12th, 1982, Thomas Sophonow was arrested in Vancouver and charged with the murder of Barbara Stoppel. He was brought back to Winnipeg the next day. On May 17th, 1982, the preliminary hearing commenced before Judge Rubin who found that there was sufficient evidence to commit him for trial.

The first trial commenced October 18th, 1982, in the Court of Queen's Bench of Manitoba. The jury could not reach a unanimous verdict and, as a result, a mistrial was directed on November 6th, 1982.

Thomas Sophonow's second trial commenced before Justice Scollin on February 21st, 1983, and resulted in a conviction on March 17th of that year. He appealed to the Manitoba Court of Appeal on the grounds that the Trial Judge had not fairly and adequately put the theory of his defence before the jury. On the 13th of March, 1984, the Court of Appeal for Manitoba agreed with that submission and ordered a new trial. Leave to appeal that decision was sought in the Supreme Court of Canada but was refused on December 10th, 1984.

Thomas Sophonow's third trial was presided over by Chief Justice Hewak. It began on February 4th, 1985, and ended in a conviction on the 16th of March of that year. Thomas Sophonow again appealed to the Court of Appeal of Manitoba, once again on the grounds that the Trial Judge had not fairly and adequately put the theory of his defence before the jury. Again, after reviewing all the evidence, the Court of Appeal agreed with this submission and found that there were, indeed, grounds for a new trial. However, it observed that Thomas Sophonow had already spent 45 months in custody and that, if a new trial were ordered, it would be his fourth trial. The Court, therefore, set aside the guilty verdict and directed an acquittal. Once again, the Crown sought leave to appeal the acquittal and on April 22nd, 1986, the Supreme Court of Canada dismissed the Crown's application.

Thomas Sophonow always sought an exoneration. Indeed, a great deal of his time and energy from 1985 to the present time has been directed towards achieving that result.

Jurisdiction and Terms of Reference of the Commission of Inquiry

The Commission of Inquiry (the "Inquiry") was established pursuant to the provisions of Section 83 of the *Manitoba Evidence Act*, C.C.S.M.E. 150. This Section provides that the Lieutenant Governor in Council may cause an inquiry to be made into any matter concerning the administration of justice within the Province or any matter that is of sufficient public importance to justify an inquiry.

The Inquiry was established by Order in Council #232/2000 issued on June 7th, 2000. A copy of that Order in Council appointing me as Commissioner is set out as Appendix "A"

to this report. The Order in Council refers to the reinvestigation of the murder and specifically states that the Chief of Police for the City of Winnipeg is satisfied that Thomas Sophonow had no involvement. It also states that a review by the Crown Attorneys in the Department of Justice supports the results of the reinvestigation and that the Attorney General of Manitoba accepts the conclusion of the Chief of Police.

The Order observes that the police investigation following the death of Barbara Stoppel, the proceedings against Thomas Sophonow and subsequent reinvestigations of the case have raised a number of questions concerning the administration of criminal justice in Manitoba which are of sufficient public importance to justify an inquiry. At the outset, I must again commend the actions of Chief Ewatski of the Winnipeg Police Service, the Minister of Justice and the Ministry of Justice of Manitoba. It was extremely courageous, fair-minded and astute to undertake the reinvestigation of this case and to acknowledge the innocence of Thomas Sophonow. It is never easy to recognize past mistakes and to have done so is worthy of the highest commendation.

The Order emphasizes that the Inquiry is not to result in a retrial of Thomas Sophonow. Further, the Inquiry is to proceed in such a way that the investigation of another suspect is not compromised. I have endeavoured to comply with both these directions.

The Order specifically provides that I am to:

> "inquire into the conduct of the investigation into the death of Barbara Stoppel, and the circumstances surrounding the criminal proceedings commenced against Thomas Sophonow for the murder of Barbara Stoppel"

and

> "advise on whether, in the circumstances of this case, including the entry of a final verdict of acquittal by the courts, Thomas Sophonow is entitled to financial compensation because, amongst other factors, of his imprisonment while pending trial, appeals and re-trials for an offence that he had not committed, and, if so, the basis for entitlement on the facts of this case."

If I determine that Thomas Sophonow is entitled to financial compensation, I am to advise on the appropriate amount.

The Order in Council directs me to report my findings in connection with the police investigation and the criminal proceedings, including any findings regarding practices or systemic issues that may have contributed to or influenced the course of the investigation or the prosecution. It also directs me to make recommendations that I consider advisable relating to the current administration of criminal justice in the Province of Manitoba.

I must, of course, perform my duties without expressing any conclusion or recommendation regarding civil or criminal responsibility of any person or organization.

The rules of evidence governing an Inquiry are far different and far more permissive than those applicable to a civil or criminal trial. It follows that any findings or conclusions, which I may make, should not and cannot be taken as findings of civil or criminal liability or responsibility.

The Order in Council requires that the Inquiry be completed and the report containing my findings, conclusions and recommendations be delivered to the Attorney General by or before June 30th, 2001. However, there were delays both at the commencement and during the Inquiry occasioned by the ongoing police investigation. Hearings were not commenced until late in October in order to avoid any possibility of interfering with that investigation. For the same reason, the first phase of the Inquiry heard evidence relating to compensation issues rather than the initial investigation. The hearing of evidence and submissions on all aspects of the Inquiry were not completed until June 12th. The time for filing the report was therefore extended to September 30th, 2001.

Notice

Notices of the Hearings of the Inquiry were published on Tuesday, September 19 and Wednesday, September 20, 2000, in the Globe & Mail, the Winnipeg Free Press and the Winnipeg Sun. They are set out in Appendix "B".

Standing

At the standing hearing on October 13th, 2000, the following parties requested and were granted standing:

- Mr. Thomas Sophonow;
- the Stoppel family: Barbara Stoppel's mother, Muriel Stoppel; her brother, Rick Stoppel; and her sister, Roxanne Marciniw;
- the Manitoba Association of Crown Attorneys;
- the City of Winnipeg, which represents the Winnipeg Police Service;
- the Province of Manitoba;
- the Department of Justice of the Province of Manitoba;
- the Winnipeg Police Association;
- the four Crown Attorneys who prosecuted Thomas Sophonow: Mr. George Dangerfield, Mr. Gregg Lawlor, Mr. Stuart Whitley, and Mr. Robert Gosman; and
- the Association in Defence of the Wrongly Convicted (AIDWYC).

I recommended to the Province of Manitoba that it provide funding to AIDWYC at the legal aid rate of the Province of Ontario. The Order in Council provides for funding the representation of Thomas Sophonow and the Stoppel family.

Witnesses

It was physically impossible to call all witnesses who testified during the three trials. Some had died, some could not be traced, some, like Mrs. King, were too ill to testify. In many instances, their evidence at trial was so routine, so straightforward, that there was no need to hear them at the Inquiry. Commission Counsel prepared a witness list that included all the significant and available witnesses who could contribute to the Inquiry. The list was circulated to all counsel. Counsel were then asked if there were other witnesses who they wished called. A few other witnesses were requested and they were duly subpoenaed and testified.

Rules of Practice and Procedure

The Inquiry adopted Rules of Practice and Procedure, attached as Appendix "C", which were modeled on those approved by the Supreme Court of Canada in the Krever Inquiry and adopted in the Morin Inquiry.

Factual Background

In December 1981, Barbara Stoppel was working as a waitress at the Ideal Donut Shop. On the 23rd of December, she began her shift at 4:00 p.m. Mr. Vlademir Ududec, the proprietor of the store, came in, paid Barbara her wages, removed money from the till and left $33.00 in it. A regular customer was there when Mr. Ududec arrived. He testified that he left the store at about 8:10 p.m. or a little later. There were no other customers in the store when he left. It is known that Barbara Stoppel then spoke on the phone to a friend of hers for a few minutes. Apart from the murderer, the friend was the last person to speak to Barbara Stoppel. At about 8:45 p.m. on the 23rd of December, several witnesses found her in the women's washroom of the donut shop. She had been strangled and was close to death. Witnesses had earlier observed a male in the donut shop.

Mrs. Janower worked at the Boots Drugstore. It was in the same shopping plaza and close to the Ideal Donut Shop. At about 8:20 p.m., she went to the donut shop for coffee. When she arrived, she saw a man standing inside, at the front door of the shop. He locked the door to the donut shop. He then turned and headed towards the washroom on the left hand side of the shop. Mrs. Janower returned to the drugstore and told another employee, Ms Nash, about the suspicious activities that she had just observed. They attempted to call the owner of the donut shop but were unsuccessful.

At about 8:30 p.m., Mr. Norman Janower arrived at the drugstore to pick up his wife. She told him of the suspicious activities that she had seen at the donut shop. Mr. Janower looked toward the donut shop and saw a man turn the "open/close" sign over and come out the front door. Mr. Janower walked towards the donut shop. As he approached the shop, Mr. Janower met Mr. Doerksen who was also coming to the door outside the donut shop. Mr. Doerksen asked the man coming out of the donut shop what was happening and was told that the store was closed. Mr. Janower walked into the donut shop and

called out. When he received no response, he went to the rear of the shop, opened the door of the women's washroom and found Barbara Stoppel collapsed on the floor. He shouted to his wife to call the police and an ambulance.

Mr. John Doerksen was selling Christmas trees close by the donut shop. He went to the Ideal Donut Shop at about 8:35 p.m. to have coffee. When he arrived, he found the front door locked and could see no one inside. He waited for about five minutes and was joined by Mr. Janower. They both saw a man come out of the ladies' washroom and close the door. After picking up a box, the man went to the front door, flipped the sign to "closed" unlocked the door and came out. The man made some comment to Mr. Janower and Mr. Doerksen that the store was closed. When Mr. Janower discovered Barbara, he called to Mr. Doerksen to follow the man who was now running towards the Norwood Bridge.

Mr. Doerksen picked up a baseball bat at the Domo gas station and followed the man. He caught up to him a quarter of the way across the bridge and an altercation of some kind took place. When the man drew a knife, Mr. Doerksen backed away. Mr. Doerksen saw the man throw something over the bridge. When he returned to the donut shop, he saw the police at the scene and decided to go home. At home, he drank about five bottles of beer and decided to call the hospital and inquire about Barbara Stoppel. This was the first time that he spoke to the police. Shortly after that call, the police picked him up and took a statement from him.

Mr. Paul McDougald arrived at the shopping centre at about 8:25 p.m. He parked his truck in a way which permitted him to watch the activities within the donut shop. His wife went to the Boots Drugstore while he remained in his truck. Mr. McDougald watched a man in the donut shop talking with the waitress. The two people in the donut shop talked for a few minutes, then walked to the back of the store with the man leading, followed by the waitress. At the rear of the store, they continued talking for a time and then the man returned to the front of the store and locked the door. He then went back to the rear of the store and both entered the ladies' washroom.

At this point, Mr. McDougald went into the drugstore and spoke to Mrs. Janower. He then returned to his truck and continued to watch the donut shop but did not see anything further. He then went into G & T Television, told the manager of the suspicious actions that he had observed and they both continued to watch the donut shop. A short time later, they observed a man come out of the washroom. Upon reaching the front door, the man turned the "open/close" sign, unlocked the door and left in a hurry. He was carrying a brown cardboard box and walked towards the McDonald's store.

Mr. Marcel Gloux was driving over the Norwood Bridge that evening. He saw a male person standing on the side of the bridge throwing items down to the river below. He also saw a man wearing what he believed was snowmobile outfit, who was armed with a baseball bat and running towards the man on the bridge. This would have been about 8:45 p.m.

The police searched the riverbank under the bridge and found five individual pieces of green and yellow braided nylon rope identical to that used in the killing. They also found a small cardboard box. These items were immediately below the place where Mr. Doerksen had confronted the suspect. The police found footprints proceeding from the north end of the bridge going in an easterly direction up an embankment on to the railway tracks. These footprints indicated that the man was travelling in an easterly direction. However, they could not follow the tracks further because of drifting snow and the overlay of more recent footprints, probably made by railroad employees.

Also recovered from the ice surface under the bridge were two pairs of gloves. One pair was a tan colour leather and the other set was black/white woven gloves. On the black/white gloves, there was green and yellow twine that was identical to that used in the killing.

The police received the telephone call for assistance from Ms Nash at 8:46 p.m. The police arrived shortly after the call and took possession of the scene. The women's washroom showed evidence of a struggle. There were a number of small bloodstains on the floor, south wall and sink. The wastebasket had been overturned and its contents spread across the floor.

Mr. Vlademir Ududec, the owner of the donut shop, arrived on the scene and, on checking the cash register, determined that there was a total of $33.00 missing.

The police sealed off the parking area and the vehicles were checked. There was no vehicle with a British Columbia license plate found.

The man seen at the donut shop was described by eyewitnesses as being 21 to 30 years old, with brown hair, possibly with a reddish tinge, scruffy looking, with scraggly sideburns, a poor complexion with some noticeable acne pimples or pock marks, particularly on the left side of his face. He had a longish mustache. He was 6'1" - 6'3" in height with a slim build, weighing between 145 – 185 pounds. He was said to be wearing prescription glasses, a black or dark-coloured cowboy hat, a dark-coloured, waist length coat, blue jeans and round-toed or cowboy boots. The eyewitnesses stated that he might have been wearing a pair of black or white work gloves, a pair of tan leather gloves and had a ring on the ring finger of his left hand. From the descriptions given by the witnesses, a composite drawing of the suspect was made by the police artist. The sketch was circulated through the media. As a result of the media publication of the composite drawing, the police received over 700 tips regarding possible suspects.

As it transpired, the twine used to strangle Barbara Stoppel was the only significant piece of physical evidence recovered from the scene. There can be no doubt that it matched the twine that was thrown from the bridge. Fibres from Barbara Stoppel's sweater were found imbedded in the twine thrown over the bridge. Identification of the manufacturer of the twine would be of importance to the case.

Apart from omitting the fundamentally important aspect of having the twine tested to identify with certainty the manufacturer, the police investigation regarding it was thorough. As a result of their inquiries, the police found that most people who viewed the twine were of the opinion that it had been manufactured by Berkley Canada. It is true that the Berkley company's officials, upon a visual inspection of the twine, said that it was not their twine. However, they did go on to say throughout the communications with them that, if a conclusive analysis were required, Berkley could run a test to determine whether the twine contained its tracer element. Berkley Canada and Berkley U.S. were careful to put a tracer element in their twine so that it could be established whether or not it was their twine in case of a lawsuit against them. The cost of the test was only a $100.00 and yet it was never performed.

The other major manufacturer of this type of twine, Powers Twines, stated that, from a visual inspection, the twine was their's. It was then assumed by the police that the Powers company manufactured the twine. Its plant was located in Washington State on the west coast and a major customer was B.C. Hydro. This twine was used to pull electric cables or wiring through conduits. Based on the assumption that the twine came from British Columbia, the police sought a suspect with links to that province. This was a significant conclusion that led to the investigation of Thomas Sophonow. The issue of the twine will be discussed at greater length later under a separate heading.

The police discovered that Thomas Sophonow had been in Winnipeg to visit his two-year-old daughter on the 23rd of December, 1981. He arrived in Winnipeg from Vancouver either late on the 22nd or early in the morning of the 23rd. He had given a ride to someone he knew as far as Portage la Prairie. He slept for a few hours in a vacant apartment which he believed to be occupied by a friend. When he got up on the 23rd, he drove around looking for a friend he could not locate. It is sufficient for our purposes that he visited his brother and sister-in-law, the Kleins, from 3:00 to 5:00 p.m. He left with them a gift for his daughter. He spoke to his former wife, Nadine, at about 5:30 p.m. attempting unsuccessfully to make satisfactory arrangements to see his daughter.

Sometime after that, he was experiencing some trouble with his brakes. As a result, he went to the Canadian Tire garage on Pembina Highway. While there, he saw Mrs. Peasgood and her daughter. He shared his sandwich with her daughter. While he was waiting for his car, he on two occasions went to the nearby Safeway store and purchased red mesh Christmas stockings to give to children in Winnipeg hospitals. He called his mother in Vancouver from the phone in or near the Canadian Tire waiting room. He spoke to her from 7:52 to 7:56 p.m.

His time with the Kleins is confirmed and is important in light of statements made by the "McDonald's witnesses". They were to the effect that a tall man with a cowboy hat was in the restaurant for some time during the afternoon. He appeared to be watching the Ideal Donut Shop. The man they saw could not have been Thomas Sophonow.

The Winnipeg Police asked the Vancouver police to interview Thomas Sophonow. The interview was conducted by Detective Barnard. Although Detective Barnard found Thomas Sophonow to be a credible person, who was forthcoming and apparently willing

to provide pictures of himself, samples of his hair, blood and anything that was required, there was a reason for further investigation. It arose from Thomas Sophonow's apparent statement that he could have been in the coffee shop where Barbara Stoppel was murdered sometime between 8:00 and 9:00 in the evening. Detective Barnard was careful to say that his notes of the interview with Sophonow were not verbatim. Further, the statement to Detective Barnard is somewhat ambiguous as to whether Thomas Sophonow was, indeed, in the Ideal Donut Shop.

In any event, a few days later, Sergeants Wawryk and Paulishyn arrived in Vancouver to interview Thomas Sophonow. Following a lengthy interrogation, lasting over four hours, he was placed under arrest and confined in the Vancouver lock-up. Unknown to him, Constable Black, a police officer (cell man) was placed in the same facility and spoke to him. More will be said of this interview and the statement made to Constable Black later.

For the present, it is sufficient to note that Mr. Whitley, the Senior Crown on the third trial, stated that the two most significant pieces of evidence linking Thomas Sophonow to the crime were his identification by eyewitnesses and his demonstration to the cell man as to how he locked the door of the donut shop. The frailty of those two aspects of the evidence will become apparent later in the course of a review of the evidence of the eyewitnesses and the initial interview conducted by Sergeants Wawryk and Paulishyn, including the subsequent statements made by Thomas Sophonow to Constable Black.

It would now be appropriate to consider a number of issues and the frailty of the conclusions that were drawn from them.

These will include:

1. the initial interview with Thomas Sophonow conducted by Sergeants Wawryk and Paulishyn;
2. the nature of the eyewitness identification;
3. the investigation of Terry Arnold as a suspect;
4. the lack of testing of the twine for the chemical tracer. That test would have demonstrated that it was not the Powers Company located in Washington State which manufactured the twine but Berkley & Company with a plant located in Portage la Prairie;
5. the evidence regarding timing;
6. the allegations of sexual assault made in the third trial;
7. the investigation of the alibi evidence;
8. the use of jailhouse informants;
9. the disclosures which Crown Counsel acknowledged ought to have been made to Defence Counsel based on the requirements of disclosure of 1982; and
10. the conduct of the trials.

In the review of these issues, I have attempted to make each of them complete in itself. The result of this decision is that some elements of the report may appear to be repetitious and for this, I apologize.

The Role of Police Officers

In the course of this report, it will be necessary for me to criticize the unfortunate acts and omissions of some members of the Winnipeg Police Service. That criticism is limited to this case and should not be taken as directed to either the police in general or this force in particular.

No society can exist without a police force. History has shown that the more dominant and totalitarian the state, the greater the need of that state for a large and powerful police presence. Yet it is equally true that no democratic society can exist without the police. It is the police who must investigate criminal offences and quasi-criminal acts prohibited by provincial law. Without the police to investigate crimes and see that the law is upheld, society would be chaotic. Police officers have a fundamentally important role to play in the daily lives of all Canadians. Quite simply, it is pointless to enact laws for the protection and welfare of society if those laws are not enforced. That difficult task of enforcement falls upon the police.

By their careful investigations and fair enforcement of the law, the police serve and protect society. Their role is frequently dangerous and police forces are often understaffed. Their work is demanding and requires strict attention to the most minute details. Their training must be thorough and the lessons completely mastered in order that officers attain and maintain a high level of skill in their demanding work. They must have a high standard of integrity. They must be diligent in their work. By their courage in the face of danger, by their dedication to providing scrupulously fair and honest investigations and through their honest and courteous dealings with all members of society, they can and do become role models for young people. A career in the police force is an honourable one. The police are entitled to respect and appropriate recognition of their difficult role.

What does it take to be a good policeman? I think it requires characteristics of courage, dedication, diligence, patience and integrity.

In order to do their work efficiently, the police are given broad and far reaching powers including those of search, seizure, arrest and the right to bear arms. To the granting of those broad powers are attached onerous responsibilities. Chief of those responsibilities is the duty to investigate with scrupulous care, integrity and absolute fairness all crimes to which they are assigned. When the police carry out their responsibilities in conformity with those high standards, they will be assured the highest respect and recognition for their services. The police are essential to the functioning of our society and must be recognized as providing an essential service. In the vast majority of cases, they meet and surpass the high standards imposed upon them. When the police fall below these high

standards which our society must impose upon them, there should be recognition of that failure and steps taken to ensure that it happens as infrequently as possible.

It is with a recognition of the important role of the police and the dangers and difficulties which they face that I approach the various issues involving the police in this case. They include the role of the police in dealing with eyewitnesses and gathering identification evidence. I must as well consider the manner in which police should conduct their interviews with suspects. I recognize from the outset that the standard which I must adopt in considering the role of the police in the Sophonow investigation is that of 1982 and I shall do so. As well, I must take into account the frailties of human memory and recognise that this investigation was held more than 18 years after the event and I will also make due allowance for that throughout these comments and findings.

I will outline the progressive steps that the Winnipeg Police Service has taken to greatly improve its procedures in those areas and make some additional recommendations that may benefit other investigations and the administration of justice.

POLICE INTERVIEWS WITH THOMAS SOPHONOW IN VANCOUVER

Interview of Thomas Sophonow by Detective Barnard

When the Winnipeg Police Service obtained information which indicated that Thomas Sophonow was in Winnipeg on December 23 and that he bore a resemblance to the composite drawing, a request was made to the Vancouver police to interview him. The interview was conducted by Michael Barnard, a detective with the Vancouver force. He testified at the Inquiry in a very fair and frank manner. Detective Barnard stated that he called Thomas Sophonow to arrange an interview with him. A date was set which was changed at the request of Thomas Sophonow to the 3rd of March. On that day, Thomas Sophonow met with Detective Barnard.

The interview was described by both Thomas Sophonow and Detective Barnard as casual and informal. Detective Barnard made notes of the interview although he stated that they were certainly not verbatim. Perhaps the only significant statement recorded by Detective Barnard was that Sophonow stated "I could have been in Ideal Donut Shop 49 Goulet". However, it should be noted that Thomas Sophonow in his testimony said that the statement should have read "I could not have been in Ideal Donut". The statement was not read back and signed at the time that it was taken. However, later in the police car, it was presented to Thomas Sophonow who stated that, although he did not read it over, he did sign it. Certainly, to have the statement read and signed by the witness is a significant step in the right direction. It gives the person interviewed an opportunity to review what he or she said and to correct mistakes that may have been made and to add material that was omitted. This is a procedure that was not followed by Sergeants Wawryk and Paulishyn when they interviewed Thomas Sophonow later.

It must be remembered that Detective Barnard had no information regarding the murder, other than a circular received from the Winnipeg Police. He did not have particulars of the way in which the murder was committed. Nor did he have any information as to the actions of the murderer in apparently locking and unlocking the door of the donut shop. Thus, it is apparent that he could not have advised Thomas Sophonow of the manner in which the door appeared to have been closed by the murderer. Further, he stated categorically that he could not have advised Thomas Sophonow as to the manner in which the door was locked because he simply did not know about it. In any event, he stated, and I accept, that he did not advise Thomas Sophonow about the twisting motion required to lock the door.

Detective Barnard notified the Winnipeg Police Department of the result of the interview. Although he was left with a favourable impression of Thomas Sophonow, who appeared to be cooperative in every respect, he noted that, in light of the reference to the donut shop, further investigation of him should be undertaken.

Interrogation of Thomas Sophonow by Sergeants Wawryk and Paulishyn

On March 12, Sergeants Wawryk and Paulishyn arrived in Vancouver to interview Thomas Sophonow. They attended at his residence with Detective Barnard and then drove to the Vancouver Public Safety Building. The officers conducted an interrogation with Thomas Sophonow that extended over a lengthy period of time. It began at 1:30 p.m. and continued until 5:34 p.m. The interview was divided into five segments: the first segment went from 1:30 to 2:27 p.m. (57 minutes); the second from 2:47 to 3:06 p.m. (19 minutes); the third from 4:04 to 4:30 p.m. (26 minutes); the fourth from 4:50 to 5:02 p.m. (12 minutes); and the final portion from 5:16 to 5:34 p.m. (18 minutes). Between the interviews, there were breaks of 20 minutes, 58 minutes, 20 minutes and 14 minutes respectively.

During these breaks, Thomas Sophonow was given the opportunity to use the washroom and have a coffee.

The meeting took place in an interview room at the Vancouver Public Safety Building. Sergeants Wawryk and Paulishyn both kept notes although they took turns conducting specific portions of the interview. Sergeant Paulishyn stated that, when he conducted a portion of the interview, he would take verbatim notes while Sergeant Wawryk made general notes. The situation was reversed when Sergeant Wawryk asked the questions. The officers said that they both proceeded in the same manner. That is to say, the question would be formed, then written down and then it would be asked. When the response was made, that would be recorded. The same procedure would be followed with the next question and so on throughout the whole interview. The officers stated that the only omissions from their notes were conjunctions and words which were unnecessary to convey the substance of the question or the response. Later, the notes of both officers were reviewed by Sergeant Paulishyn in order to prepare a typewritten supplemental report.

It would seem that, if the interrogation was conducted in the manner described by the officers, there would be no question that it could be transcribed by them verbatim. Yet it is clear that the record is anything but verbatim! Take, as one example, the difference between Sergeant Paulishyn's notes and the notes of Sergeant Wawryk with regard to Thomas Sophonow's statement that he stopped at the Ideal Donut Shop. In Sergeant Paulishyn's notes, the following appears:

> "I stopped for a coffee
> where the chick got killed there
> between 8:00 and 9:00"

Sergeant Wawryk's notes are as follows:

"Coffee
Donut shop
8:00 – 9:00
15 – 20 minutes coffee black only"

This is the most crucial part of the interview and yet there are significant differences between the notes of the officers. It was clear that this very important part was not taken down verbatim.

There are other differences between the notes of the officers which further confirm that the statement transcribed by the officers was far from verbatim.

There are other aspects of the interview which are worrisome.

a) When the interview commenced, Thomas Sophonow was not given a full caution and advised that any comments that he made could be used against him. This is significant because, according to the officers, Thomas Sophonow was, at the time, the prime suspect. (Inquiry, Vol. 39, page 6029). The omission, in itself, would not be a cause for great concern but, taken with all the other unfortunate aspects of the interview, it does indicate that there was a lack of fairness demonstrated by the officers.

b) He was not told that he could call a lawyer at any time. This is not something that was either required or done automatically in 1982. It is simply symptomatic of the manner in which the interview was conducted. In this regard, Sergeant Paulishyn testified that, once a suspect talks to a lawyer, it lessens the likelihood that he will talk to the police. (Inquiry, Vol. 40, page 6463).

Mr. Paulishyn also testified that the less Thomas Sophonow knew about the extent of the trouble he was in, the more likely he would be to start talking. (Inquiry, Vol. 40, page 6457).

c) Sergeants Wawryk and Paulishyn were unaware of any witnesses who had claimed to see Thomas Sophonow at the donut shop. Despite this, Sergeant Paulishyn told Thomas Sophonow on three occasions that witnesses described "you" as leaving the donut shop and that witnesses described a brown cowboy hat. Sergeant Paulishyn said that this was done to see if they could get a confession from Thomas Sophonow. Once again, this is a police tactic that could well be justified. It might have been better put if the suggestion was along the lines of "what would you say if we were to tell you that witnesses saw you leaving the restaurant and described your hat".

d) Thomas Sophonow was asked whether he suffered from any psychological disorders. Again, Sergeant Paulishyn testified to the effect that this was done to

see if they could break his will so that Thomas Sophonow would confess. This tactic was in part successful as demonstrated by Thomas Sophonow's testimony that they took his will from him.

e) He was told that he was lying. (Inquiry, Exhibit 149 - Police Supplemental Report, Vol. 16B, page 884).

f) He was cross-examined as to what Detective Barnard did or did not say to him.

All of this might have been acceptable in 1982 when the interview was conducted. However, there is one aspect that demonstrates more than anything else the unfairness of the manner in which these interviews were conducted. At the end of the second segment of the interview, Thomas Sophonow was strip-searched and a search of his anal cavity was made to ascertain if he was carrying drugs. There was no possible reason for this strip search. Detective Barnard did not consider him to be a physical threat at anytime. Further, he was never challenging or threatening to Sergeants Wawryk and Paulishyn. He was patted down when they reached the Vancouver Public Safety Building. Significantly, he was not searched when he got into the cruiser.

Sergeant Paulishyn testified that he was not concerned about contraband or weapons and that, if he had been, he would have searched Thomas Sophonow prior to taking him into the police car. Nor was there any reason for the anal cavity search conducted by Sergeant Wawryk. Thomas Sophonow was told by the officers at his residence that he would be finished in time to go to work. He certainly was not expecting to be kept in jail and, thus, there was no reason for him to conceal drugs of any kind on his person in the expectation of imprisonment.

There is no doubt that a search of this kind conducted at this stage, without any basis or reason, would be a psychological blow. It was an affront to his dignity and composure. There was no need for the search and certainly no urgency with regard to it. Sergeant Paulishyn went so far as to agree that a strip search could be considered an affront to a person's dignity and composure. (Inquiry, Vol. 40, page 6519).

Other experienced officers, including Sergeant Biener, Detective Barnard and Inspector Hall, were critical of the use of the strip search in this case. Detective Barnard indicated that in the course of investigating a number of murder cases he had never conducted a strip search. Sergeant Biener was extremely frank and candid when he stated that he would not conduct a strip search of a suspect in the middle of an interview. He went further and stated that he had done "zero strip searches" in the course of murder investigations. He found this strip search to be "troubling and unsettling". (Inquiry, Vol. 46, pages 7887-7888).

Not unexpectedly, there are differences in the testimony of Sergeants Wawryk and Paulishyn and Thomas Sophonow. Thomas Sophonow testified that the interview began slowly and then the pace was accelerated through rapid-fire questions and raised voices. (Inquiry, Vol. 3, page 136). He stated that during the course of the interview the officers

made a twisting motion to show how the door of the donut shop was locked. (Inquiry, Vol. 3, page 144). He testified that the interview had a lasting effect upon him. It led to nightmares that still haunt him. He testified that he just wanted the interview to end and that he asked for legal counsel on a number of occasions during the interview.

On the other hand, Sergeants Wawryk and Paulishyn testified that, contrary to Thomas Sophonow's testimony, voices were not raised and the interview proceeded in an orderly and appropriate fashion. It was their evidence that the only time Thomas Sophonow asked for a lawyer was at the end of the interview and, when the request was made, the interview was terminated. They denied making a twisting motion demonstrating the locking of the door to Thomas Sophonow. There are certain aspects of both these versions which I find to be correct.

I am satisfied that there were no raised voices. If there were, they would have been heard by Detective Barnard who testified that he did not hear anything coming from the interview room. I am left in some doubt as to the manner in which the interview was conducted. Certainly, in my view, the questions and answers that were taken down do not account for the length of time that the interview lasted. I find that there are gaps in the transcript during which questions must have been asked and answers given that were not recorded.

One of the things that was not recorded by the officers was that a twisting motion was, in fact, demonstrated to Thomas Sophonow. This I find to have been done by the officers. I can come to no other conclusion on this matter. The Inquiry has proceeded on the basis that it was not Thomas Sophonow who committed the murder. It was not Thomas Sophonow who was in the Ideal Donut Shop sometime between 8:00 to 8:45 p.m. It was not Thomas Sophonow who went out of the donut shop, crossed the Norwood Bridge and threw over the railing the box, the twine and the gloves. Thomas Sophonow had no occasion to lock the door of the donut shop. He would not and could not have known how that door was locked.

It cannot be forgotten that, after having his car repaired at the Canadian Tire, he did, indeed, visit various hospitals in Winnipeg to deliver the Christmas stockings. He then left to return to Vancouver. He was in Vancouver from the 25th of December through to the time of his interview on March 12. During that time, he did not go back to Winnipeg. He was working regularly in Vancouver as a doorman or bouncer at the Lougheed Hotel. He was involved then with Beth Peterson and was in the course of moving her into the premises which he occupied at his sister's home. There is simply no other way that he could have learned of the manner in which the door was locked, other than through Sergeants Wawryk and Paulishyn. When Sergeant Paulishyn was asked this very question as to how Thomas Sophonow could have known how the door was locked, he could not account for Thomas Sophonow's knowledge of this. It was argued on behalf of the officers that this was public knowledge and it was through that public knowledge that Thomas Sophonow would gather that information. However, it was not public in the sense that it was published in the newspapers. It was public knowledge only to the extent that the action was observed by the eyewitnesses.

That Thomas Sophonow learned of the manner in which the door was locked at the interview with Sergeants Wawryk and Paulishyn is confirmed by the timing of his statement to Constable Black. Following the interview, Thomas Sophonow was placed in the holding cells. At that time, Constable Black of the Vancouver Police Department was placed in the cell. He was the cell man who talked to Thomas Sophonow. It was to Constable Black, shortly after his interview with Sergeants Wawryk and Paulishyn, that Thomas Sophonow demonstrated the twisting motion of locking the door. It is significant that he did not confess to a murder to Constable Black. To the contrary, he told Constable Black that he had an alibi. It is true that he made a stupid comment to the effect that he was looking forward to a free trip to Winnipeg when he might have the opportunity of seeing his daughter but he did not confess to murdering Barbara Stoppel.

The demonstration of the manner in which the door was locked was described by Mr. Whitley, Senior Crown Attorney on the third trial, as the most devastating piece of evidence implicating Thomas Sophonow. This evidence, coupled with testimony of the eyewitnesses, was considered by him to be proof that Thomas Sophonow was the murderer.

If what transpired during the course of that interview had been properly transcribed, it would have included the demonstration by the officers of the turning motion necessary to lock the door of the donut shop. Thus, the so-called devastating evidence would be seen in its proper light as resulting from a demonstration by the officers.

Something else must be said of this interview. There is no doubt that it had a lasting and traumatizing effect on Thomas Sophonow. This was very evident from his reaction when he gave evidence regarding it. His reaction and testimony were so emotional and so intense that they could not have been the result of the rehearsing or acting of a part. It is unlikely that the best and most experienced actor could have portrayed the reactions of Thomas Sophonow. Something happened during the course of that interview which left a terrible and lasting impression on Thomas Sophonow. Clearly, the interview continues to haunt him to this day.

It was said that Thomas Sophonow brought upon himself many of the problems that led to his being charged and convicted of murder. It was said that he should have revealed the evidence regarding his alibi to Sergeants Wawryk and Paulishyn. In my view, the interview was conducted in such a manner that he could not have trusted these officers with this information.

Certainly, Thomas Sophonow said some things in the course of the statement that he admitted were untruthful.

However, by far the greatest damage was occasioned by the manner in which the interview was conducted. It is, to me, very significant that the notes of the interview were never presented to Thomas Sophonow for his comments as to any omissions or their correctness or for his signature. It was said that this was done because he asked for a lawyer and they would not continue the interview in light of that request. However, the notes of the interview could have been presented to him at any time for his comments, if

not for his signature. I am left with a feeling of unease as a result of the manner in which the interview was conducted. As a result, I am not certain what was actually said during the interview and perhaps, more importantly, what was omitted from the transcript of the interview.

The Winnipeg Police Service confirmed that interviews with suspects are now videotaped whenever that is possible. If not videotaped, they are audiotaped. This is a very sound and progressive step in the interview procedure. In my view, taping is an essential element of the interview.

RECOMMENDATIONS

- **The evidence pertaining to statements given by an accused will always be of great importance in a trial. The possibility of errors occurring in manually transcribing a verbal statement by anyone other than a skilled shorthand reporter is great; the possibility of misinterpreting the words of the accused is great; and the possibility of abusive procedures, although slight, exists in those circumstances. That, coupled with the ease with which a tape recording can be made, make it necessary to exclude unrecorded statements of an accused. It is the only sure means of avoiding the admission of inaccurate, misinterpreted and false statements.**

- **I would recommend that videotaping of interviews with suspects be made a rule and an adequate explanation given before the audiotaping of an interview is accepted as admissible. This is to say, all interviews must be videotaped or, at the very least, audiotaped.**

- **Further, interviews that are not taped should, as a general rule, be inadmissible. There is too great a danger in admitting oral statements. They are not verbatim and are subject to misinterpretation and errors, particularly of omission. Their dangers are too many and too serious to permit admission. Tape recorders are sufficiently inexpensive and accessible that they can be provided to all investigating officers and used to record the statements of any suspect.**

EYEWITNESS IDENTIFICATION

The Eyewitness Evidence and the Role of Police in Gathering and Presenting It

There are many troubling and worrisome aspects of the eyewitness identification that arise in this case. The witness who had the best opportunity to see the murderer was John Doerksen. He was considered by the police and the Crown to be the most important witness who could be put forward to identify the killer.

John Doerksen

Sometime after 8:15 p.m. on December 23rd, John Doerksen went to the Ideal Donut Shop to get a coffee. The door was locked and he saw a person inside the shop. He saw that person at the cash register take a cardboard box. He saw the murderer leave the shop with a box, unlock the door, close it behind him and then move rapidly towards the Norwood Bridge. On the instructions of Mr. Janower, Mr. Doerksen followed this man. He stopped to pick up a baseball bat at the Domo Gas Station. He caught up to the man on the Norwood Bridge and there was an altercation.

Mr. Doerksen stated that the man drew a knife and that he backed away. He testified that he went back over the bridge towards the donut shop, hailed a cab and tried to follow the man but was unable to locate him. This was untruthful and, although unfortunate, perhaps it was an understandable attempt to aggrandize his role in these events. In fact, Mr. Doerksen returned to the area of the donut shop, saw that the police were there and went home to consume five beers.

Later that evening, he gave a description of the man he followed to the police.

Sometime later, Mr. Doerksen agreed to a session with a hypnotist at the University of Manitoba where he again described the murderer with some variations from his first description.

The questionable nature of Mr. Doerksen's identification became readily apparent in the following weeks.

On the 6th of January, 1982, Mr. Doerksen called the police from the Norwood Hotel. He reported that the killer was in the hotel at that moment. He said that, if he was not the killer, he was certainly his twin brother. This was an identification of Mr. Dubé as the killer and he was quickly exonerated by the police. Shortly thereafter, Mr. Doerksen identified a Sun reporter as the killer and he too was speedily exonerated.

He reported that he was seeing the killer everywhere and that every tall man resembled the killer.

Most significantly, he attended a line-up on March 13th which included Thomas Sophonow. The line-up was conducted by Sergeant Biener. Although Thomas Sophonow stood out as the tallest person in that line-up, Mr. Doerksen was unable to identify anyone as the man he struggled with on the 23rd of December.

At the Inquiry, Mr. Doerksen testified that Sergeant Shipman was in the room with him while the identification parade was held. He stated that Sergeant Shipman suggested that he should consider number seven, which was the number that Thomas Sophonow had been given for this parade. He also stated that Sergeant Shipman told him that those in the line-up could change articles of clothing with any other member of the line-up. Sergeant Shipman vehemently denied these suggestions. Counsel for Thomas Sophonow observed that I should consider that the ability to change clothes was something that was permitted by the Winnipeg Police Service in March of 1982. He noted as well that Sergeant Shipman put Mr. Pollack, Counsel for Thomas Sophonow, in a different position than did Sergeant Biener, who made a note of Mr. Pollack's position during the line-up parade.

It is true that there are differences in the evidence of Sergeant Biener and Sergeant Shipman. However, I prefer the evidence of Mr. Shipman to that of Mr. Doerksen and I am satisfied that Mr. Shipman did not by words or actions suggest that Mr. Doerksen should identify Thomas Sophonow. The very fact that Mr. Doerksen did not identify anybody indicates to me that no such suggestion was made to him.

The evidence relating to Mr. Doerksen becomes even more troublesome. At approximately 9:30 a.m. on Monday the 15th, Constable Foster saw John Doerksen on the street and picked him up for a spot check. Constable Foster was unable to tell the Commission why he picked up Mr. Doerksen. In any event, he found that there was a warrant for Mr. Doerksen for unpaid fines. He took him to the Public Safety Building. While he was waiting for his father to pay the fines, Mr. Doerksen came face to face with Thomas Sophonow. He had with him a copy of a Winnipeg newspaper which contained a picture of Thomas Sophonow. He spoke to Mr. Henley, a custodial officer at the Remand Centre, and asked if he could see Thomas Sophonow. He was directed by Mr. Henley to the area of Thomas Sophonow's cell. There, he again saw Thomas Sophonow. I wonder how many people would have been directed to Thomas Sophonow simply because they had a picture of him published in a recent edition of a Winnipeg newspaper. In any event, as strange and disturbing as this apparent chance meeting may be, there is no evidence of any arrangement or conspiracy on the part of the Winnipeg police to have Mr. Doerksen meet Thomas Sophonow.

Mr. Doerksen explained that his ability to identify Thomas Sophonow when he saw him in a cell at the Remand Centre was because he was clean-shaven whereas he had not been at the time that he viewed the line-up on the 13th. However, Exhibits 52 and 53 are photos of the line-ups of the 13th and 15th of March in both of which Thomas Sophonow appears to be clean-shaven. His appearance was just the same on the 13th as it was on the 15th, when he was seen and purportedly identified by Mr. Doerksen. There really is no basis for the statement that there was any difference in Thomas Sophonow's appearance

from the time that he was seen in the line-up on March 13th and the time that he was seen in the Remand Centre on the 15th of March.

On the 24th of March at the Public Safety Building, he met Sergeants Wawryk and Paulishyn and advised them that he had seen Thomas Sophonow in court that day and he was now "90% sure" that Thomas Sophonow was the man even though he had not been able to pick him out at the line-up.

Prior to the preliminary hearing, Sergeant Biener prepared a "can say" report which indicated that, although Mr. Doerksen was unable to identify Thomas Sophonow at the time of the line-up on March 13th, after seeing him at the Provincial Remand Centre he was now 90% sure that Thomas Sophonow was the killer. (Inquiry, Exhibit 149 – Police Supplemental Report, Vol. 16B, page 812). It is, indeed, strange that, by the time he testified at the preliminary hearing, he was certain of the identity of Thomas Sophonow and he had no reservations whatsoever. He testified with the same certainty that Thomas Sophonow was the killer at each of the three trials.

This situation becomes even more troublesome. Mr. Doerksen advised the Winnipeg Police, when they were reinvestigating the case, that in 1982 he required glasses and he had trouble with his eyes at night and in poor lighting conditions. (Inquiry, Vol. 22, page 2254). Further, Mr. Doerksen had developed a friendship with the Stoppel family, particularly Mr. Fred Stoppel. He met with him on numerous occasions and it may be that the friendship that he developed affected his opinion with regard to the identification of Thomas Sophonow.

Lastly, Sergeant Biener noted that Mr. Doerksen came to court during the first and second trials on the days that he was to testify with "quite a shine on". (Inquiry, Exhibit 149 – Police Supplemental Report, Vol. 16B, page 924). In light of all these circumstances, it is apparent that little, if any, weight can be attached to the evidence of Mr. Doerksen.

Mr. Doerksen's mistaken identification of Mr. Dubé and his reference to being 90% sure were referred to in Police Supplemental Reports. There will be a separate review of the problems arising from the failure to disclose this material to Defence Counsel.

The significance of these reports of mistaken identification and lack of certainty arises from the evidence given by the Crown Attorneys Dangerfield, Whitley and Lawlor. They all stated that these reports should have been disclosed to the Defence because they went to the credibility of an important eyewitness.

Lorraine Janower

Lorraine Janower looked into the Ideal Donut Shop on the evening of the 23rd of December, 1981, and saw the man who murdered Barbara Stoppel. On March the 11th, 1982, she was shown a Polaroid photo line-up which had been prepared by Sergeants Wawryk and Paulishyn. Mr. Whitley, the Senior Crown on the third trial, reviewed this

line-up and testified that it was not well done and, indeed, that it was not entirely fair. Mr. Gregg Lawlor, who was the junior crown to Mr. Dangerfield in the first and second trials, reviewed the line-up and was obviously concerned about it since he instructed Sergeants Wawryk and Paulishyn to prepare a second photo line-up.

Dr. Loftus is an eminent expert in the field of memory function and eyewitness identification. She reviewed the line-up and noted its obvious shortcomings. She stated that, when you look at this line-up, the picture of Thomas Sophonow stands out from the others. It is, indeed, different as it is the only picture with a border on it and the only picture that seems to have been taken outside. The photos which comprise this line-up are set out in Exhibit 55. The differences in Thomas Sophonow's pictures are such that it might just as well have carried a notation saying, "here I am". When Mrs. Janower reviewed the line-up, she stated that: "If anything he's like this. There's something about this guy, of all of them he'd be the closest". (Inquiry, Exhibit 2, Preliminary Hearing, Vol. 2, page 519).

This photographic line-up is, indeed, startlingly unfair. And I say that in light of the standards of the time and without regard to the higher standards that now prevail. The unfairness is emphasized by the fact that there was available to the police a photograph of Thomas Sophonow taken five years earlier. That photograph is part of the Inquiry. (Exhibit 169, Tab M). When it was shown to his brother and sister-in-law (the Kleins), they stated that it was a good likeness of Thomas Sophonow in 1982. The other photographs were all of people who corresponded at least to some degree to the descriptions of the murderer that had been provided by the eyewitnesses. Sergeant Vandergraaf expressed the opinion that the photo on file with the police was strikingly similar to the "composite" made by the police artist based on his discussions with the eyewitnesses. Further, he had been advised by Alex and Diane Klein that the composite resembled Thomas Sophonow. There can be no doubt that the second line-up was far more balanced than the first. It is certainly significant that, when it was presented to eyewitnesses, they could not pick out anybody as the man whom they saw.

Norman Janower

Mr. Janower as well saw the killer while he was in the donut shop. He, like his wife, was shown the same unfair Polaroid photo pack line-up. However, the Sergeants (Wawryk and Paulishyn) were careful to properly show the photo pack separately to Mrs. Janower and to Mr. Janower. Mr. Janower, referring to the picture of Thomas Sophonow, stated: "This guy, I know him from somewhere. I don't know why. I couldn't be sure with the pictures." (Inquiry, Exhibit 2, Preliminary Hearing, Vol. 2, page 517).

Mr. Janower also viewed a live line-up on the 15th of March, 1982. This line-up was conducted by Inspector Roy Smith, who acted as the inside officer in the room with the witnesses viewing the line-up. Sergeant Biener had the members of the line-up parade before Mr. Janower. He stated: "from what I see I'd say #7." He was asked why do you say that. He responded: "Because he's about the right height and weight and he walks just like the guy." (Inquiry, Exhibit 149 – Police Supplemental Report, Vol. 16B, page 898; Inquiry, Vol. 30, page 4655).

Inspector Smith, who was the officer in the room with Mr. Janower during the line-up, very fairly stated that it was not a positive identification as far as he was concerned. He reported to Sergeant Biener, by 9:15 on the 15th of March, what Mr. Janower had said and told him that it was not a positive identification. (Inquiry, Vol. 30, page 4671).

Sergeant Biener's recollection of events is somewhat different from that of Inspector Smith. On this issue, where there is difference, I accept the evidence of Inspector Smith. Sergeant Biener stated that he met Norman Janower by chance after the identification line-up. He stated that he asked Mr. Janower if he was quite sure of his identification and he replied that he was. It is noteworthy that this question did not correspond with the information that Inspector Smith had given to him: namely, that Mr. Janower had not made a positive identification.

Sergeant Biener continued and stated that he reminded Mr. Janower of the seriousness of the investigation and asked if he would be willing to swear under oath as to the accuracy of his choice. Mr. Janower stated that, as far as he was concerned, number seven (Sophonow) was the guy and that he would testify to that. (Inquiry, Vol. 30, page 4674). Again, I would point out that this does not conform with the report given by Inspector Smith.

The exchange went still further. Mr. Janower asked him if he had picked out the "right guy". To this, Sergeant Biener replied that he had picked out the person being investigated as a suspect. (Inquiry, Vol. 30, page 4674).

It is significant and worrisome that, following the identification parade, the conversation between Sergeant Biener and Mr. Janower should have taken place at all. It is still more troublesome that Sergeant Biener should have reinforced Mr. Janower's identification with the result that it then became certain while before it was tentative at best. At the very least, this conversation should have been disclosed to Defence Counsel and to the jury. Although Mr. Janower could not make a positive identification from either the photo line-up or the in-person line-up, he was certain and sure of his identification by the time that he testified at the preliminary hearing and later at the three trials. Mr. Janower was so sure of his identification that, even after the exoneration of Thomas Sophonow, he testified at the Inquiry that Thomas Sophonow was the man he saw in the donut shop. To me, his testimony clearly demonstrated that certainty should never be taken as indicating the accuracy of an identification. Further, this evidence indicates that his testimony was strongly influenced by his conversation with Sergeant Biener. In my view, this conversation so tainted his identification that little, if any, weight should have been attached to it.

Sergeant Biener's evidence was as frank and candid on this issue as it was throughout this Inquiry. He stated that he did not attempt to influence Mr. Janower by his comments. Yet he agreed that his remarks may have been unfortunate in that they reinforced Mr. Janower in his identification. It is interesting to note the difference of opinion among officers with regard to whether this should have been done. Inspector Smith stated that he had no opinion on the practice of police officers confirming that a particular

eyewitness had picked out a suspect in the line-up. He stated that he had often done the same thing. (Inquiry, Vol. 30, page 4657). Sergeant Wawryk, on the other hand, expressed disapproval of the practice. (Inquiry, Vol. 25, page 3304). This indicates to me that, in 1982, there was a lack of policy and of training of Winnipeg Police officers with regard to questioning eyewitnesses about their identification evidence after they had viewed a line-up. Police officers should not speak to eyewitnesses regarding their identification after they have viewed a line-up. It can only raise questions as to whether an identification, which was then tentative, was reinforced to the point that it subsequently becomes a certain identification.

Mildred King

Mrs. King was too ill to testify at the Inquiry. During the trials, she testified that she was in the parking lot close to the Ideal Donut Shop the night of the 23rd of December, 1981. She remembered seeing a tall man in a cowboy hat approaching her. She fell and looking up saw a large man. On the 15th of March, 1982, she viewed a line-up conducted by Inspector Roy Smith. After the men had been paraded before her, Inspector Smith asked Mrs. King: "Do you see the subject". And she answered: "No". (Inquiry, Vol. 30, page 4665). The next question was: "Are you positive," to which she replied: "Yes". She then asked to have one more look at the men saying that it was the way one man was walking out. She asked to see the last five again. All the men were brought back. She then said: "No, I can't swear. Number 7 was the closest from the side view, the right side view." (Inquiry, Vol. 30, pages 4667 and 4668). Inspector Smith very candidly and frankly testified that she had not made a positive identification. (Inquiry, Vol. 30, page 4668). It is apparent that she was doing no more than making a comparative choice among the people whom she saw in the line-up.

Once again, it concerns and worries me that, despite her inability to identify Thomas Sophonow in the line-up, by the time Mrs. King testified at the preliminary hearing and later at all three trials, she was positive in her identification that Thomas Sophonow was the man whom she saw on the 23rd of December, 1981. The changes in her position as to identification were disclosed to Defence Counsel; however, the jury should have been cautioned as to the resulting weakness of her identification.

In this case, there were errors made by police officers which contravened the practice and procedure recognized as being appropriate in 1982. It is clear that the identification evidence was weak from the outset. It is, indeed, unfortunate that many of the police reports which demonstrate the weakness of this evidence were not disclosed to Defence Counsel. The failures to disclose will be reviewed in another section. They will be considered in the context of the existing practice and procedure of 1982. It will be seen that these were matters that ought to have been disclosed to Defence Counsel.

There is no doubt that the mistaken eyewitness identification played a very significant role in the wrongful conviction of Thomas Sophonow. The inconsistencies and weaknesses of this evidence were well documented. They demonstrated the frailties of the identification evidence but they were not disclosed to Defence Counsel.

The Experts' Position Regarding Eyewitness Testimony

At this stage it will be helpful to consider the expert testimony tendered on the subject of eyewitness identification.

Peter Neufeld

Peter Neufeld is an experienced trial lawyer. He is one of the founders of the Innocence Project in New York and co-author of a book entitled "Actual Innocence". He has had a great deal of experience in the investigation of wrongful convictions in 74 cases. The depth of his experience and the breadth of his knowledge can be gathered from his *curriculum vitae* filed as Appendix "D" to this Report. In his book, he has set out the factors leading to convictions which were later established by DNA evidence to be wrong. When the study was done to determine why these people were wrongfully convicted, it was discovered that, in 81% of the cases, mistaken identification evidence significantly contributed to the wrongful conviction.

Elizabeth Loftus

Dr. Loftus is a full professor of psychology and professor of law at the University of Washington in Seattle. Her *curriculum vitae* is filed as Appendix "E" to this Report. She has conducted extensive research in the area of human memory and eyewitness testimony and has consulted with the Law Reform Commission of Canada. Her 1996 report, "Convicted by Juries, Exonerated by Science", was a study of 28 wrongful convictions, all uncovered through DNA testing. Since that report was done, research has continued and 80 cases of wrongful convictions have been discovered and reviewed.

She testified that memory occurs in three stages, namely: acquisition, retention and retrieval. Research has been undertaken to determine and to analyze what transpires in all three stages. The acquisition phase represents the time when an event occurs and some information is stored in the memory system. After the event is over, time passes and this period is referred to as the retention stage. Finally, there is the retrieval stage. This occurs when a person attempts to retrieve information from the memory in response to questions as to what happened. For example, retrieval takes place when a witness is asked to look at photographs in order to try to make an identification.

There are a number of factors which affect memory during the acquisition phase. Some are obvious, such as the state of the lighting and the time that the witness had to observe the incident. Interestingly, witnesses almost always think that an event took place over a longer period of time than it actually did. Not surprisingly, alcohol has a negative impact on acquisition, as do stress and fear. There is as well a weapon focus. As a result of this focus, witnesses may remember a weapon to the exclusion of other details. This means that they will often be able to describe a gun or a knife accurately, to the detriment of their ability to describe the person holding the weapon. Geographical distance of the witness from the place where the incident took place is also a factor that affects memory.

With regard to retention, Dr. Loftus explained that there is a forgetting curve: that is to say, things are forgotten over time. Also, over the passage of time, people become more and more susceptible to post-event information. Indeed, post-event information that is false or misleading can create a false recollection in a witness.

She described retrieval as including requests to look at pictures and being asked questions as to the event. If someone is questioned about an event, then asked to look at pictures and questioned yet again when testifying at the trial, those are all acts of retrieval. She testified that the manner in which memory is retrieved is extremely important. Accuracy of testimony may depend on how questions are posed. If the question is put in the form: "How fast were the cars going when they smashed into each other", it may elicit a different response than the question: "How fast were the cars going when they hit each other".

She described photo line-ups or live line-ups as a form of multiple choice testing.

She stated: "If a suspect stands out in some obvious way it is an unfair multiple choice test." She described it as similar to having the correct answer underlined or set out in bold print in a multiple choice test. (Inquiry, Vol. 51, page 8936).

She emphasized that, if memory has been contaminated by an unfair test, the damage cannot be repaired. If an effort is made to correct it by giving an unbiased test later on, she likened it to trying to squeeze toothpaste back into a tube. The later test acts in the same manner as a post-event experience where the person is called upon to make subsequent acts of retrieval.

She explained that, if a witness is shown a photo pack and then views a live line-up and only one person is carried over in both, the suspect may look familiar because of the photos. This she described as creating a very serious problem. Witnesses have a difficult time keeping track of where they have seen someone. All of us see many people in many places but we have only one memory.

She testified that there is a very weak relationship between the confidence level of a witness and the accuracy of that witness. This, of course, is directly contrary to what most people think and believe to be the case. (Inquiry, Vol. 51, page 8940). She noted that studies in the United States indicated that the confidence level of a witness had a powerful effect on jurors: that is to say, they tend to find confident witnesses more believable. (Inquiry, Vol. 51, page 8942). Further, she stated that if a witness is confident, even if unduly confident, it is hard to overcome that apparent confidence through cross-examination. Thus, those witnesses are seldom shaken. She emphasized that faulty eyewitness identification is by far the single most important cause of wrongful convictions.

Problems noted by Dr. Loftus in the identification by witnesses in this case

Dr. Loftus noted that many problems are apparent in the evidence of the identification witnesses in this case.

For example, she testified that when, as here, there are multiple witnesses who participated in the preparation of a composite drawing, those witnesses have an opportunity to influence one another. They often inadvertently supply each other with erroneous information. This is true even if they are not together in the room when the composite is being prepared. This, she noted, created problems with the identification made by Mrs. Janower. (Inquiry, Vol. 51, pages 8947-8949).

With regard to hypnosis, she pointed out that the experience within the United States was such that many jurisdictions either restrict or bar the use of witnesses who have been hypnotized. This is done because people under hypnosis are suggestible and often assume that what they retrieve under hypnosis must be accurate. This, in turn, increases their confidence. However, what is retrieved under hypnosis is not necessarily accurate. She added that, where the hypnosis occurs before there is a particular suspect, there is less concern about suggestions. This was the situation with Lorraine Janower. (Inquiry, Vol. 51, pages 8950, 8954). Lastly, she indicated that what is recalled through hypnosis may readily merge with the conscious memory. This is something which happens automatically.

Problems with the photo line-up

Dr. Loftus observed that, in the photo line-ups that were shown to the Janowers, Thomas Sophonow's picture was significantly different. His picture has a yellow background and margin and his hat is at a cocked angle, as is the hat in the composite drawing. This may well have led to a sense of familiarity. Even so, it was significant that Lorraine Janower's identification was equivocal. Dr. Loftus noted that she was making a relative judgment based on a comparison of the photographs shown to her. Further, her eventual identification was reinforced by her exposure to a number of images of Thomas Sophonow published in the media between her tentative photo identification and her certain identification at the preliminary and at the first trial. The media photos acted as post-event information, which reinforced the brief acquisition of the memory and the tentative identification. (Inquiry, Vol. 51, page 8959).

Norman Janower

His period of observation was only seven to ten seconds; however, that can be sufficient to make an identification. Yet, there is no doubt that there could be a fading of the memory between the acquisition on the 23rd of December and the first photo line-up shown to him on March 11th.

The March 15th physical line-up, which he attended, had problems in that Thomas Sophonow stood out in terms of height.

Even so, Norman Janower's initial identification was tentative. However, 45 minutes after the line-up, he met Sergeant Biener and he learned that he had picked out the police suspect. This may have been the basis for his change from a tentative identification of Thomas Sophonow to one of absolute certainty.

Dr. Loftus stated that often the main reason for someone's change in testimony is as a result of receiving or being supplied with new information from police officers. (Inquiry, Vol. 51, page 8966.)

Mildred King

Mrs. King went from a tentative identification at the line-up to a positive identification by the time of the preliminary hearing. Dr. Loftus suggested that it was possible for witnesses, while waiting to testify at the preliminary hearing, to discuss the evidence with others and that might have the effect of changing their position from a tentative to a certain identification. There was no evidence that there was such a discussion in this case.

John Doerksen

Dr. Loftus pointed out that, even though the line-up which Mr. Doerksen attended on the 13th was unfair, he was unable to pick out anyone as the person whom he saw at the Ideal Donut Shop. In her opinion, the identifications that he made on the 15th and the 24th are clear examples of memory being affected by post-event information. This was demonstrated by his progression from no identification to a positive identification. (Inquiry, Vol. 51, page 8976). Mistaken eyewitness identification played a significant role in the wrongful conviction of Thomas Sophonow, as it has in many other cases. She stated that safeguards are needed to prevent this from happening in the future. I trust that the recommendations set out later will be helpful in that regard.

Present Winnipeg Police Service Procedures

Dr. Loftus' comments on the present Winnipeg Police procedures pertaining to line-ups were generally positive and favourable although she did stress that the pictures in a photo line up should be presented sequentially to an eyewitness.

The Winnipeg Police Service is to be commended for the great strides that it has taken in the procedures that it has adopted for dealing with identification evidence.

Live line-up

The live line-up process is similar to that use in 1982. The procedural guidelines provide that the officer in the room with the witness must not be familiar with the suspect. In fact, the officer should not know who he is or whether he is in the line-up. Any statement made by the witness as to identification must be noted.

The fillers used in the line-up are chosen for their resemblance to the suspect. It was explained that live line-ups are very rarely used. Rather, line-ups are conducted by means of photographs.

Photo line-up

The photos are selected by computer. All the photographs are the same in size and shape. They are selected based on their similarity to the suspect and they are not more than 10 in number. The officer presenting the photographs is required to instruct the witness that he does not know the suspect and is not aware if his photo is included in the pack and that the suspect may not be included.

On behalf of the Winnipeg Police Service, it was agreed that there would be no objection to a recommendation that the officer conducting the photo line-up be required to present the photographs sequentially rather than altogether as a package. There was as well agreement that the entire interview with the witness should be recorded on audiotape from the commencement of the interview to its conclusion. There was an evident willingness to consider and adopt recommendations that might result from the Inquiry.

RECOMMENDATIONS

Live line-up

- **The third officer who is present with the prospective eyewitness should have no knowledge of the case or whether the suspect is contained in the line-up.**

- **The officer in the room should advise the witness that he does not know if the suspect is in the line-up or, if he is, who he is. The officer should emphasize to the witness that the suspect may not be in the line-up.**

- **All proceedings in the witness room while the line-up is being watched should be recorded, preferably by videotape but, if not, by audiotape.**

- **All statements of the witness on reviewing the line-up must be both noted and recorded verbatim and signed by the witness.**

- **When the line-up is completed, the witness should be escorted from the police premises. This will eliminate any possibility of contamination of that witness by other officers, particularly those involved in the investigation of the crime itself.**

- **The fillers in the line-up should match as closely as possible the descriptions given by the eyewitnesses at the time of the event. It is only if that is impossible, that the fillers should resemble the suspect as closely as possible.**

- **At the conclusion of the line-up, if there has been any identification, there should be a question posed to the witness as to the degree of certainty of identification. The question and answer must be both noted and recorded verbatim and signed by the witness. It is important to have this report on record before there is any possibility of contamination or reinforcement of the witness.**

- **The line-up should contain a minimum of 10 persons. The greater the number of persons in the line-up, the less likelihood there is of a wrong identification.**

Photo pack line-up

- **The photo pack should contain at least 10 subjects.**

- **The photos should resemble as closely as possible the eyewitnesses' description. If that is not possible, the photos should be as close as possible to the suspect.**

- **Everything should be recorded on video or audiotape from the time that the officer meets the witness, before the photographs are shown through until the completion of the interview. Once again, it is essential that an officer who does not know who the suspect is and who is not involved in the investigation conducts the photo pack line-up.**

- **Before the showing of the photo pack, the officer conducting the line-up should confirm that he does not know who the suspect is or whether his photo is contained in the line-up. In addition, before showing the photo pack to a witness, the officer should advise the witness that it is just as important to clear the innocent as it is to identify the suspect. The photo pack should be presented by the officer to each witness separately.**

- **The photo pack must be presented sequentially and not as a package.**

- **In addition to the videotape, if possible, or, as a minimum alternative, the audiotape, there should be a form provided for setting out in writing and for signature the comments of both the officer conducting the line-up and the witness. All comments of each witness must be noted and recorded verbatim and signed by the witness.**

- **Police officers should not speak to eyewitnesses after the line-ups regarding their identification or their inability to identify anyone. This can only cast suspicion on any identification made and raise concerns that it was reinforced.**

- It was suggested that, because of the importance of eyewitness evidence and the high risk of contaminating it, a police force other than the one conducting the investigation of the crime should conduct the interviews and the line-ups with the eyewitnesses. Ideal as that procedure might be, I think that it would unduly complicate the investigation, add to its cost and increase the time required. At some point, there must be reasonable degree of trust placed in the police. The interviews of eyewitnesses and the line-up may be conducted by the same force as that investigating the crime, provided that the officers dealing with the eyewitnesses are not involved in the investigation of the crime and do not know the suspect or whether his photo forms part of the line-up. If this were done and the other recommendations complied with, that would provide adequate protection of the process.

Trial instructions

- There must be strong and clear directions given by the Trial Judge to the jury emphasizing the frailties of eyewitness identification. The jury should as well be instructed that the apparent confidence of a witness as to his or her identification is not a criteria of the accuracy of the identification. In this case, the evidence of Mr. Janower provides a classic example of misplaced but absolute confidence that Thomas Sophonow was the man whom he saw at the donut shop.

- The Trial Judge should stress that tragedies have occurred as a result of mistakes made by honest, right-thinking eyewitnesses. It should be explained that the vast majority of the wrongful convictions of innocent persons have arisen as a result of faulty eyewitness identification. These instructions should be given in addition to the standard direction regarding the difficulties inherent in eyewitness identification.

- Further, I would recommend that judges consider favourably and readily admit properly qualified expert evidence pertaining to eyewitness identification. This is certainly not junk science. Careful studies have been made with regard to memory and its effect upon eyewitness identification. Jurors would benefit from the studies and learning of experts in this field. Meticulous studies of human memory and eyewitness identification have been conducted. The empirical evidence has been compiled. The tragic consequences of mistaken eyewitness identification in cases have been chronicled and jurors and Trial Judges should have the benefit of expert evidence on this important subject. The expert witness can explain the process of memory and its frailties and dispel myths, such as that which assesses the accuracy of identification by the certainty of a witness. The

testimony of an expert in this field would be helpful to the triers of fact and assist in providing a fair trial.

- **The Trial Judge must instruct and caution the jury with regard to an identification which has apparently progressed from tentative to certain and to consider what may have brought about that change.**

- **During the instructions, the Trial Judge should advise the jury that mistaken eyewitness identification has been a significant factor in wrongful convictions of accused in the United States and in Canada, with a possible reference to the Thomas Sophonow case.**

INVESTIGATION OF TERRY ARNOLD AS A SUSPECT

Before the arrest of Thomas Sophonow, Terry Arnold was for a time a suspect. There are a number of ways in which he was linked to Barbara Stoppel. It is not without significance that he went to the St. Boniface Hospital on the 28th of December, 1981 to enquire as to Barbara's condition. At that time, he met Mrs. Stoppel. He told her that he was a truck driver, that he had frequented the Ideal Donut Shop and had come to know Barbara.

The Winnipeg Police Service became aware of this visit on the 28th and he was interviewed the following day by Constable Bell. In the opinion of Constable Bell, Terry Arnold was similar in appearance to the composite drawing. He wore glasses and had acne or pimples, as described by some of the eyewitnesses. It is interesting to note that Thomas Sophonow did not have acne or pimples. Terry Arnold was, in the opinion of Constable Bell, "somewhat strange". Constable Bell noted that he had lived at 9-25 Cromwell, a three-storey apartment building. From that building, the Ideal Donut Shop could be seen.

A friend of Terry Arnold called the police to advise them that Mr. Arnold bore a similarity to the widely publicized composite drawing. The friend stated that Mr. Arnold regularly wore a cowboy hat and cowboy boots.

Jackie Gurergil was put forward by Terry Arnold as someone who could provide an alibi for him. However, it was learned that she could not give evidence as to his whereabouts at the relevant time.

He was further interviewed by the Winnipeg Police on the 17th of January, 1982. He told Sergeant Paulishyn that at one time he had a crush on Barbara Stoppel.

Thus, the investigations that were done on Terry Arnold at the time indicated that:

a) he resembled the composite drawing;
b) he had an acne scarred face, similar to that described by several of the eyewitnesses;
c) he wore dark framed glasses as described by the eyewitnesses;
d) he knew Barbara Stoppel and had a crush on her;
e) there was evidence from the eyewitnesses that Barbara Stoppel spoke to the man in the donut shop and followed him into the washroom;
f) he wore cowboy boots and a cowboy hat;
g) he lived within five minutes of the Ideal Donut Shop; and
h) he did not have an alibi for the pertinent time on December 23rd, 1981.

Despite these findings, which might have been significant, photographs of Terry Arnold were shown only to Mr. Doerksen and to Mr. Gloux. Further, although Mr. Arnold's fingerprints were on file with the police, they were not compared to those found at the Ideal Donut Shop.

Mrs. Janower had seen a photograph of Terry Arnold in a Winnipeg newspaper. She testified at the Inquiry that he looked more like the person she saw in the Ideal Donut Shop than did Thomas Sophonow.

It is unfortunate that the investigation of Terry Arnold did not proceed further. Once again, Sergeant Biener, with his usual candour, testified that Terry Arnold slipped through the cracks of the investigation of the murder of Barbara Stoppel. This is a very sad and telling conclusion.

Sergeant Biener appeared to me to be a very conscientious, fair minded and for the most part a competent police officer. He frankly conceded that problems existed in the police department in 1982. There was no officer placed in charge of the investigation, there was a lack of co-ordination of the shifts working on the case, and there existed an atmosphere of mistrust amounting at least to suspicion between groups of officers working on the case. He very fairly conceded that he, like other officers working on the case, suffered from tunnel vision. Recently, the Winnipeg Police Service instituted lectures to officers on tunnel vision. This is certainly a welcome step forward. This is particularly true since there does not appear to have been any recognition of this as a problem in 1982.

Inspector Blair McCorrister testified that today the investigation of Terry Arnold would not have fallen through the cracks. He testified that the science of profiling an investigation has progressed since the 80's. A comment that he made is particularly telling. He stated:

> "In a review of this case there are certain things, and it's ... it's amazing how the appearance of Mr. Arnold at the hospital on that day carried no concerns with any of the investigators, with no one in charge. However, today when officers review that or hear of what happened, they are amazed and I think that speaks of the degree of advancements in profiling and the awareness of the sciences." (Inquiry, Vol. 54, pages 9682-9683).

The Inspector also referred to the improvements made by the Winnipeg Police Service in the investigation of major crimes. The shift system in operation in the 1980's has been radically changed. There is no longer a division, or at times an overlapping, of the work of the day and night shifts. Rather, at the present time, there is a senior officer in charge of each serious crime. That officer organizes and coordinates the work to be done. All reports and supplemental reports are prepared and filed in chronological order and sequentially numbered. They all come to the officer in charge of the investigation who will make all decisions required to further the investigation.

Today, it would be that officer who would follow tips or leads and, for example, match the fingerprints of Terry Arnold with those found in the women's washroom of the Ideal Donut Shop.

Mr. Finlayson, Assistant Deputy Attorney General of Manitoba, testified as to the work that was done organizing a lecture for police officers relating to the effects of tunnel vision, its dangers and steps that can be taken to avoid it.

I commend the Winnipeg Police Service for the progressive steps that it has taken. As well, I make the following recommendations relating to police procedures:

RECOMMENDATIONS

Tunnel vision

- **Tunnel Vision is insidious. It can affect an officer or, indeed, anyone involved in the administration of justice with sometimes tragic results. It results in the officer becoming so focussed upon an individual or incident that no other person or incident registers in the officer's thoughts. Thus, tunnel vision can result in the elimination of other suspects who should be investigated. Equally, events which could lead to other suspects are eliminated from the officer's thinking. Anyone, police officer, counsel or judge can become infected by this virus.**

- **I recommend that attendance annually at a lecture or a course on this subject be mandatory for all officers. The lecture or course should be updated annually and an officer should be required to attend before or during the first year that the officer works as a detective.**

- **Courses or lectures that illustrate with examples and discuss this problem should be compulsory for police officers and they would undoubtedly be helpful for counsel and judges as well.**

Police notebooks

- **At the present time, officers, upon retiring or leaving the force, are required to keep their notebooks. This is unsatisfactory. At the Inquiry, evidence was given by conscientious officers that notebooks, which they kept in their homes after retirement, had been lost or irreparably damaged by fire or flood. This should not happen. The Municipality should be responsible for saving officers' notebooks. They should be kept preferably for 25 years, or at least 20 years, from the date that the officer leaves the force or retires. There are**

changes that occur in forensic science; witnesses emerge; or new physical evidence is discovered; and any of these elements may make a reinvestigation necessary. In those circumstances, the original notes would be of great importance. I realize that storage is a problem. However, the notebooks might be preserved by way of microfiche. In any event, storage should not become an insurmountable problem for the Police Service or the Municipality. The notes must be kept on file for the requisite time.

Exhibits - whether filed in court or gathered in the course of the investigation.

- These exhibits should also be stored for at least 20 years from the date of the last appeal or the expiry of the time to undertake that appeal. These should be preserved for the same reasons set out for the preservation of police notebooks. They should only be given to someone, such as an officer who investigated the crime, if a court order to that effect is obtained. Notice of such an application should be given to the Attorney General of the Province and to the accused. Exhibits should not be given to a police officer or former officer unless a court order has been obtained.

THE ROLE OF CROWN COUNSEL IN THE ADMINISTRATION OF JUSTICE

Just as it was necessary to express criticism of police officers, I must be critical of some of the actions and omissions of Crown Counsel. The criticism is limited to this case and must not be taken as a general criticism of their work or the work of any particular Crown Attorney.

The role of Crown Counsel is of great importance to the administration of justice and to the welfare of the community. The Crown prosecutor must proceed with the case against the accused fairly and courageously. Prosecutions must proceed even in the face of threats and attempts at intimidation. These insidious threats can on occasion extend to family members. Despite these threats and the danger in which the Crown and at times the family of the Crown are placed, charges must still be vigorously prosecuted. They must be brought to trial and prosecuted with diligence, dispatch and fairness. Crown Counsel are often overworked and paid less than their contemporaries who are in private practice. Nonetheless, they must be industrious to ensure that all the arduous preparation required for each trial or appeal has been completed before the matter comes to court. Crown Counsel must be of absolute integrity and above all suspicion of favouritism or unfair compromise.

Crown Counsel must be a symbol of fairness, prompt to make all reasonable disclosure. As well, they must be scrupulous in the attention given to the welfare and safety of witnesses. They enjoy the respect of all the members of the judiciary. Much is expected of Crown Counsel by society, their community and by the judiciary. The community looks upon the Crown prosecutor as a symbol of fairness, of authority and as a spokesman for the community.

As a rule, Crown Counsel attain and maintain a very high level of professional excellence and fairness. They fulfil all of society's high expectations. It is truly a high office, honoured by the bench, the bar and the community. They should always have, not only the respect of the public and the legal community, but the resources to handle their ever increasing caseloads and the financial compensation that their important office deserves.

I have no doubt that all Crown Counsel involved in this Inquiry strove to maintain the highest possible standards. They, like so many Crown Counsel, had a very heavy workload. When criticism is made of any of their actions or omissions, it must be remembered that it arises in the particular circumstances of this case. It is against this background of understanding and respect that I have considered their acts and omissions. I have sought to ensure that their actions are only viewed in the light of the practice and standards of 1982.

THE ISSUE REGARDING THE TWINE

The most significant physical evidence recovered at the crime scene was the twine that was used to strangle Barbara Stoppel. It was the Crown's position that the twine was a compelling piece of evidence linking Thomas Sophonow to the killing. This was the position taken with the jurors in each trial and the position put forward to the Manitoba Court of Appeal and to the Supreme Court of Canada. (Inquiry, Vol. 9, pages 8669 and 8570). The Crown contended that the twine was manufactured by Powers in Washington, sold to B.C. Hydro and could be readily found in plentiful supply at construction sites in British Columbia. Thomas Sophonow's residence in that province was said to link him to the crime because it gave him ready access to the twine. Unfortunately, it has now been established that the twine was, in fact, manufactured by Berkley, presumably at its Portage la Prairie plant. Let us see how this mistake came about, and consider the knowledge of at least one Crown Attorney with regard to a significant aspect of the evidence on this issue and the failure of the Crown to disclose this evidence to the Defence.

The Winnipeg Police investigation of the source of the twine led them to believe that it came from either the Powers Company in the State of Washington or the Berkley Company which had a plant in Portage la Prairie, Manitoba. Samples were sent to these companies. The Powers Company indicated that it was their twine and the Berkley Company, from a visual inspection, indicated that it was not their product. However, there was a very significant condition attached to the opinion of Berkley. It inserted a chemical trace element into its twine. Berkley did this so that it could determine whether, in fact, it was Berkley's twine if litigation arose with regard to it. The Winnipeg Police were advised that, for a fee of $100.00, the twine could be tested for the chemical trace element to determine without doubt if Berkley manufactured it.

For some reason, the testing was not done. Sergeant Biener testified that this might have been because of the difficulty that the force experienced in obtaining funds for matters such as this. This is a sad commentary if such an important test was bypassed because of a concern for spending $100.00. The twine was to be an important part of the Crown's case. If that was so, then, most certainly, the testing should have been undertaken as a matter of course. The responsibility for ensuring that the tests were done lay with the prosecution, particularly the police.

The Winnipeg Police were aware that the test would determine with certainty whether Berkley was the manufacturer of the twine. Yet Mr. Dangerfield, who was the Senior Crown Counsel at the first and second trials, stated that he was not aware that the twine could be tested and had not seen the reference to the testing. I accept without question his evidence that he was not aware that the twine could be tested. Mr. Dangerfield was clearly a leading Crown Counsel who enjoyed the respect of the defence bar and of all the legal profession in Manitoba. The fact that he is a Life Bencher confirms that he is held in the highest esteem by the legal profession in Manitoba.

There is another aspect of this issue that is extremely worrisome in light of the emphasis that the Crown placed upon the significance of the B.C. source of the twine. The Crown called Mr. Williamson of British Columbia Hydro as a witness. He was called to demonstrate that the twine was prevalent on construction sites in Vancouver and throughout British Columbia. The night before the first trial, Mr. Williamson met with Mr. Lawlor, the Crown Attorney who assisted Mr. Dangerfield at the first and second trials. At that meeting, Mr. Williamson advised Mr. Lawlor that there was another approved manufacturer of the twine in Portage la Prairie. Mr. Williamson stated that Mr. Lawlor told him that, if he was asked about this other manufacturer, he was to answer truthfully. Mr. Lawlor, in examining Mr. Williamson at trial, did not ask him about this other approved manufacturer.

At the Inquiry, Mr. Lawlor agreed that the defence should have been advised of Mr. Williamson's comments with regard to the possible source of the twine. He went further and agreed that both the practice as it existed in 1982 and the ethical duty cast upon him in 1982 were such that the comments of Mr. Williamson ought to have been disclosed to Defence Counsel. (Inquiry, Vol. 48, pages 8401–8403).

Certainly, Mr. Lawlor was in the best position to make this disclosure. Yet he did not. He testified that he would have passed the information on to his Senior Counsel, Mr. Dangerfield. However, he stated earlier that, although he could not be certain, he assumed that he had told Mr. Dangerfield. (Inquiry, Vol. 48, pages 8401, 8399).

Mr. Dangerfield denied any knowledge of Mr. Williamson's comments. However, he did agree that the defence should have been told about them. He went further and said that, if he had been aware of the comments, he would have advised the Defence of them. Mr. Pollack, acting for the Defence at the first trial, was not aware of the possibility of testing the twine for the trace element.

Mr. Brodsky, Defence Counsel in the second and third trials, assumed that the testing had been done.

In any event, at the second and third trials, Mr. Brodsky agreed to having the evidence with regard to the twine emanating from British Columbia read into the record.

Mr. Whitley, Senior Crown Counsel at the third trial, testified that he knew nothing of Mr. Lawlor's interview with Mr. Williamson. He stated that he would neither have expected nor asked Mr. Brodsky to have the twine evidence read into the record knowing that it came from somewhere other than British Columbia.

Mr. Whitley, in his factum to the Manitoba Court of Appeal and to the Supreme Court of Canada, indicated that the twine was a compelling piece of evidence linking Thomas Sophonow to the killing. Mr. Whitley testified at the Inquiry that he would never have raised the issue of the West Coast connection or stressed the importance of the twine at the third trial or in the Supreme Court of Canada Leave to Appeal Application, had he known that the twine did not come from Washington State.

Mr. Whitley went further in his factum to the Supreme Court of Canada in stating that the twine was rare and that, notwithstanding an extensive police investigation, the police were not able to locate in North America any other source for the twine apart from the manufacturer in Washington State. He confirmed that he would never have made that submission if he had known that the twine could have come from the Berkley plant in Portage la Prairie.

I repeat and stress that I am approaching this situation on the basis of the practice and ethics of 1982. On that basis, at the very least, Defence Counsel should have been made aware of the comments of Mr. Williamson that the twine may have emanated from the Berkley Company in Portage la Prairie. This was obviously a significant part of the case from the Crown's point of view. The failure to test and the failure to disclose Mr. Williamson's comments constituted a serious breach of the duties of a Crown Counsel according to the standards of 1982. It is true that the Senior Crown Counsel appeared not to have known of the ability to test the twine. If that is the case, then the prosecution, that is to say the State in the form of the Winnipeg Police Department, was responsible, at the very least, to ensure that the twine was tested to determine its origin. Mr. Williamson testified that he had been worried about the failure to bring out his comments for 19 years. It is, indeed, worrisome to anyone reviewing this situation that this was not disclosed. It must be the subject of criticism.

The failure to disclose this information undoubtedly led the Defence to accept and to agree that the origin of the twine was British Columbia. The disclosure would have ensured the testing of the twine. This, in turn, would have resulted in the elimination of this as evidence linking Thomas Sophonow to the crime.

Reference will be made to this issue later under the heading of Disclosures. Yet a recommendation must be made regarding the testing of evidence.

RECOMMENDATION

- **Whenever the police seek to link material at a crime scene to a particular geographic location or a specific manufacturer which, in turn, links an accused to a crime, that material must be tested if a test can identify a specific location or manufacturer. The duty to perform the test lies with the prosecution, whether it be the police or the Crown. The failure to perform the test on the material in question constitutes a serious omission. As a consequence of that omission, evidence as to the material's location or provenance must be ruled inadmissible.**

THE EVIDENCE REGARDING TIMING

The police were in possession of the telephone records which established that Thomas Sophonow had called his mother in Vancouver on December 23rd from the payphone in the Canadian Tire garage on Pembina Highway. That call lasted from 7:52 to 7:56 p.m. Following the call, at the very least, Thomas Sophonow would have had to walk to his vehicle and have spoken a few words to the mechanic. It is highly unlikely that he would have left the Canadian Tire garage before 8:00 p.m. Sergeants Wawryk and Paulishyn checked the time that it took to drive from the Canadian Tire garage to the Ideal Donut Shopping Plaza. In their tests, it took 14 minutes and some seconds. This, they said, they checked on numerous occasions arriving at approximately the same time on each occasion. Mr. Brodsky as well found the time for driving the distance to be around 14 minutes. (Inquiry, Exhibit 159 – Document Brief, Vol. 8, files of Greg Brodsky, pages 00145-00146). On the other hand, the W5 reporters drove the same distance and found that it took them something over 19 minutes to cover the same ground. The evidence of the eyewitnesses as to when they first went to the Ideal Donut Shop and either saw the killer inside or found the door locked was as follows:

John Doerksen: At 8:35 p.m., he came out of the Dominion store and walked to the donut shop to see Barbara. He looked in the window but saw no one. He tried the door but it was locked. He waited five minutes and a man with a beard came over from Boots.

Lorraine Janower: She stated that a man came into Boots at about 5:30 - 6:00 p.m. and asked her if she sold twine or string. Initially, she said that at about 8:15 – 8:20 p.m., she went to the Ideal Donut Shop for coffee. When she got there, a man was behind the door and he went towards the washroom.

Norman Janower: He came to pick up his wife at about 8:30 p.m. When he got there, his wife told him of the man in the Ideal Donut Shop.

Mildred King: She and a friend went to the Dominion Shopping Centre at about 8:00 p.m. She got out of her car and was confronted by a man in a cowboy hat.

Paul McDougald: Shortly after 8:00 p.m., he drove into the Dominion store parking lot. He sat in his truck for a few minutes and saw a male standing in the Ideal Donut Shop, talking to a waitress. They talked for a few minutes, then they both went back to the alcove of the store. The man came to the front and locked the front door. He then went to the back of the store where the waitress was standing and they both went into the women's washroom.

Anne McDougald: About 8:25 p.m., she drove into the parking lot of the shopping centre. She was sure of the time because she had to get cigarettes from Boots and they closed at 9:00 p.m. She went into Boots and was there for about five minutes getting her carton of cigarettes. She thought that her husband came into Boots about 8:45 p.m., asking that a call be made to the Ideal Donut Shop to see if everything was all right.

Paul Collette: He worked at McDonald's. At 7:30 p.m., a male came in and ordered coffee. He returned for another coffee at 8:15 or 8:20 p.m.

Thus, the killer would have had to be inside the Ideal Donut Shop at least before 8:20 to commit the crime.

It would appear that it was theoretically possible, although practically difficult and unlikely, for Thomas Sophonow to have left the Canadian Tire garage, driven directly to the Ideal Donut Shop and arrived there in time to commit the murder.

We know, of course, that it was not Thomas Sophonow who committed the crime. Looking at the facts from the perspective of the police, who assumed that he was guilty, there is still the problem of his vehicle. The killer left the donut shop and crossed the Norwood Bridge with Mr. Doerksen in pursuit. If it was Thomas Sophonow, he obviously left his car behind and he was running in the opposite direction from the parking lot. The parking area was quickly taped off by the police. Mr. Doerksen saw the police at the crime scene when he returned from his pursuit of the killer to the middle of the Norwood Bridge. There was no car found with a British Columbia licence plate in the plaza parking lot.

If Thomas Sophonow were the killer, he must have parked on a street which would have been on the other side of the Norwood Bridge and walked back to the donut shop. If that were the case, then the police ought to have done a study of the time that it would have taken to park on a nearby side street and the time involved in walking back to the donut shop.

Sergeant Paulishyn agreed in his testimony at the Inquiry that there was no trace of Thomas Sophonow's car on the parking lot and that he must have parked somewhere else. Thus, it would have been necessary to take into account the walking time involved to get back to the donut shop from the parking spot. This keeps pushing the earliest time that Thomas Sophonow could have entered the donut shop further and further back. If it is assumed that Thomas Sophonow was the killer, it makes the time frame extremely tight, if not impossible.

Further, it must be remembered that there is no evidence whatsoever that Thomas Sophonow knew Barbara Stoppel. Yet the witnesses saw "the waitress talking to the man in the shop for a few minutes and following him to the back of the store." The position of the police must have been that this was a random killing. As a result of his anger and frustration at not being able to visit his daughter, Thomas Sophonow attacked the first young woman he saw that bore some resemblance to his wife, Nadine. All of this is very difficult to accept. It demonstrates that the likelihood of Thomas Sophonow being the killer of Barbara Stoppel was, in the best of circumstances, always extremely remote, if not impossible. Perhaps, this is simply an oversight in the investigation. More likely, it demonstrates the tunnel vision of the police in focussing on Thomas Sophonow as the killer to the exclusion of all others and failing to accept any evidence or explanation that was contrary to their theory.

The failure to consider this aspect of the timing was an error of omission on the part of the police. It demonstrates the effect of tunnel vision. It is a dangerous, ever-present syndrome that is likely to affect all who are involved in the administration of justice. All of these, judge, counsel and police, must struggle to avoid it. Courses, reading, self-awareness and self-instruction may help to avoid it.

This example demonstrates the unfortunate results of tunnel vision. As well, it demonstrates the great importance and need for early and continued training of police to assist them to avoid this syndrome. From this case, it is readily apparent that tunnel vision can prevent the police from investigating in an appropriate and fair manner.

THE THIRD TRIAL AND THE ALLEGATION OF SEXUAL ASSAULT

At the outset, I should say that I have no doubt that Mr. Whitley is an able and conscientious Crown Counsel. I am sure that he is dedicated to the administration of justice, to the education of Crown Counsel and to establishing and maintaining a high standard for Crown Counsel. He has written on issues of criminal law. He has taken part in conferences and been instrumental in the preparation of a handbook for the Code of Conduct for Crown Counsel. Anything that I may say with regard to his conduct, or his actions in the third trial of Thomas Sophonow, should not take away from his record of dedication to the administration of justice. It is simply my role to determine what, if anything, went wrong with the investigation and prosecution of Thomas Sophonow. Despite my appreciation of Mr. Whitley's excellent standing, I am duty bound to make comments pertaining to his conduct where I deem it appropriate.

At the outset, I must deal with some concerns expressed by Mr. Whitley concerning these proceedings.

Mr. Whitley was the Senior Crown in the third trial. His junior counsel was Mr. Gosman. When Mr. Whitley attended before the Inquiry to testify on the second occasion, he expressed his concerns with regard to some matters. He stated that it was unfortunate that Mr. Gosman had not been called. However, I should repeat here what was said on the record during the Inquiry. On at least two occasions, all counsel were asked if they wished any further witnesses to be called and specific reference was made to Mr. Gosman. Neither counsel for Mr. Whitley nor any other counsel expressed a desire to have him subpoenaed or called. He would certainly have been called as a witness had any counsel expressed a desire to have him attend.

Further, Mr. Whitley expressed some concern that Commission Counsel had not told him prior to his first attendance what was required of him while that same counsel had briefed Mr. Brodsky on this subject. The difference, of course, was that Mr. Brodsky was appearing without counsel and, as I understand, it he was simply advised of the material upon which he would be examined. On the other hand, Mr. Whitley was represented by able and experienced counsel who was present or represented by Junior Counsel throughout all the proceedings of the Inquiry. His counsel would have briefed him carefully and thoroughly before he testified. Indeed, Commission Counsel advised Mr. Whitley's Counsel as to the matters which would be covered in his examination. In these circumstances, it might have been considered improper for Commission Counsel to have approached Mr. Whitley. With those comments, it is appropriate to consider his role in the third trial.

At the third trial, Mr. Whitley decided that he would lead evidence of a sexual assault. There is no doubt that some of the investigating officers, including Sergeant Biener, believed that there was a sexual motive for the assault and that there was a sexual element to it. However, the third trial was the first occasion that any evidence was called with

regard to a sexual assault. At the preliminary hearing, on a charge of murder in the first degree, Mr. Myshkowsky, Senior Crown Counsel, did not suggest that there was a sexual component to the killing. Rather, he brought forward evidence of confinement and robbery which, if accepted, could have led to an indictment for first degree murder. In any event, Thomas Sophonow was ordered to stand trial on the charge of second degree murder following the preliminary hearing.

At the first trial of Thomas Sophonow, it was argued that the motive for the killing was robbery. There was clearly ample evidence to support that theory. Eyewitnesses had seen the killer close to the cash register. There was evidence that the $33.00 that the owner had put in the cash register at 8:00 p.m. as float money had been taken. As well, there was the evidence that the killer had taken a cardboard box from the Ideal Donut Shop and thrown it over the bridge when he was pursued.

Mr. Dangerfield, an experienced and very well respected Crown Counsel, recognized as a leading counsel in Manitoba, was of the view that there was a sexual element involved in the killing of Barbara Stoppel. However, as he advised Mr. Brodsky in a telephone call prior to the second trial, he would not be putting it forward because, in his view, there was no evidence to substantiate it. (Inquiry, Exhibit 159 - Document Brief, Vol. 8, re: Mr. G. Brodsky, pages 0085-86).

Thus, neither at the preliminary hearing nor at the first or second trials had any evidence of sexual assault been adduced.

Mr. Whitley determined that he would contend that there had been a sexual assault. What was the additional evidence that was not apparent to an able and experienced Crown Counsel at the preliminary hearing or the first or second trials?

Mr. Whitley relied upon the evidence that there was a great deal of saliva present on Barbara Stoppel's sweater. He also relied upon the evidence of a dental surgeon that a gag reflex could account for the saliva on her sweater. It should be noted that there was no evidence that Barbara Stoppel was particularly subject to a gag reflex. There could be no doubt that putting forward this position was extremely prejudicial to Thomas Sophonow. In my view, there is very little in the way of evidence to support this position. It is noteworthy that Chief Justice Hewak specifically instructed the jury not to consider the evidence of sexual assault.

Further, Justice Twaddle in the Manitoba Court of Appeal, in his reasons for allowing the appeal and setting aside the conviction, expressed the same opinion with great force and clarity. He stated: "Despite Crown attempts to suggest otherwise there is not a particle of evidence of sexual involvement between Barbara Stoppel and her assailant".

After reviewing the transcript of the third trial, I am in complete agreement with the reasons expressed by Justice Twaddle. There was suspicion and supposition but no evidence to substantiate an allegation of a sexual assault upon Barbara Stoppel.

Despite this opinion, it must be remembered that there should not be any undue interference with Crown Counsel's decision as to the manner in which a case is to be prosecuted. If there is a basis upon which a position could be put forward with regard to the prosecution, Crown Counsel should be permitted to do so without restriction. However, in this case, there was no evidence, or at best grossly inadequate evidence, upon which an allegation of sexual assault could be based. The evidence was so inadequate and the effect so prejudicial that the allegation should never have been made. Restraint was required to ensure a fair trial. That element of restraint was missing.

The effect of putting forward the allegation of sexual assault is apparent from the newspaper reports of the third trial. The Winnipeg Sun reported that Crown Counsel Whitley had described a violent sexual assault in the washroom. This report clearly indicates how extremely prejudicial the allegation was to the accused.

In his second appearance, Mr. Whitley referred to evidence of male DNA being found in Barbara Stoppel's mouth. However, this evidence only surfaced in the reinvestigation and would not have been known to Mr. Whitley at the time of the prosecution of the third trial. Nor is there any evidence to suggest whose DNA it might have been. It might have come from someone who was attempting to give mouth-to-mouth resuscitation to Barbara Stoppel. Certainly, it is clear that there was no indication that this DNA ever came from Thomas Sophonow. Thomas Sophonow at all times was anxious to have his DNA taken so he would be absolved of this tragic killing.

There is another aspect of this issue which adds to the gravity of putting forward this prejudicial evidence. Namely, the sexual assault allegation was not required. There was strong evidence available to demonstrate that robbery could have been the motive for the killing. This flows from the evidence of the eyewitnesses and two of the jailhouse informants who testified at the third trial to the effect that robbery was the motive for the killing.

There is one other aspect that must be touched upon. Mr. Rick Stoppel stated that Mr. Whitley and Sergeant Biener came to see him and other members of his family. He testified that Mr. Whitley said that there would be a position put forward at the third trial that there had been a sexual assault. He stated that Mr. Whitley and Sergeant Biener told him, and other members of his family, that there was no basis for this allegation but that it was being put forward to ensure that Thomas Sophonow would do "hard time".

Both Sergeant Biener and Mr. Whitley readily agreed that they did see the Stoppel family. It was their evidence that they went to see them so they would not be shocked and surprised by this evidence when it came out at the third trial. They said that it was simply to treat the Stoppel family as humanely and with as much consideration as possible that they advised them of this.

I cannot believe that Mr. Whitley and Sergeant Biener would have put forward "hard time" as the basis for calling the evidence. Rather, I think that Mr. Stoppel, who was a very decent and concerned witness, misinterpreted what was told to him and other members of the family. I should go on and add that I am satisfied beyond any question

that Rick Stoppel did not put this forward as a basis for obtaining compensation for the Stoppel family. To suggest this is baseless and unfair.

There was criticism directed at Mr. Whitley for trying on the gloves thrown over the bridge by the killer. However, he readily agreed that he should not have done so. In any event, this was not a vital issue in the trial.

Questions regarding the use of the jailhouse informants at the third trial and matters that ought to have been disclosed at that trial will be discussed under the headings of Disclosure and Jailhouse Informants.

RECOMMENDATION

- **Crown Counsel should always maintain high standards of fairness in their role of prosecutor. That duty requires them to consider issues carefully and to exercise great restraint before raising an issue which will be highly prejudicial to the accused in situations where there is little evidence to support it. To do so may well result in an Appellate Court very properly finding that the trial was unfair.**

THE ROLE OF DEFENCE COUNSEL

There may be some explicit and some implicit criticism of the actions of Defence Counsel, particularly with regard to the disclosure of the alibi evidence. Once again, that criticism arises from the circumstances of this case and it is certainly not a general comment on their work.

The role of Defence Counsel is of great importance to the administration of justice and to our democratic society. Crown Counsel are often regarded by the community as its protector and champion. Frequently, Defence Counsel are associated with their clients. All too often, they are unfairly thought of as those who take advantage of every "loophole" in the law to gain an acquittal. Yet Defence Counsel too must be courageous. They must defend those charged with offences no matter how heinous they may be. It is Defence Counsel who must ensure that no one is found guilty unless the charge is proven beyond a reasonable doubt. They must prepare their case carefully and present it clearly and fearlessly. They are duty bound to ensure that the case proceeds with due attention to the law which binds us all.

It cannot be forgotten that it is often only the Defence Counsel who stands between the lynch mob and the accused. Defence Counsel must be courageous, not only in the face of an outraged and inflamed community, but also, on occasion, the apparent disapproval of the Court. Defence Counsel must always act fairly, can never subvert the law and must remember, no matter how trying the circumstances may be, to uphold the dignity of the Court.

Our system of justice works best when able and well prepared counsel on both sides make their presentations to an impartial arbiter.

Defence Counsel must ensure that they put forward every reasonable defence on the part of their clients and strive to ensure that only the guilty are convicted.

It cannot be forgotten that there are innocent people who are charged with murder; that there are innocent people charged with sexual assault; that there are innocent people charged with fraud; and, indeed, that innocent people may be charged with any offence set out in the Criminal Code. It is the vitally important role of Defence Counsel to ensure that no person is found guilty unless guilt is proven beyond a reasonable doubt. The penalty of imprisonment takes away the most basic liberty of the subject. Indeed, for serious crimes, the deprivation of that liberty may result in a lifetime of imprisonment. The fundamental importance of the role of Defence Counsel in our democratic society is self-evident.

ALIBI EVIDENCE

Alibi evidence was put forward in this case. It was not and could not have been concocted. Thomas Sophonow was arrested and brought to Winnipeg on March 15th. On the 16th of March, he had written a memo outlining events of the 23rd of December, 1981, for his counsel, Mr. Pollack. On the 22nd of March, he amplified that earlier memo. The memos disclose that he had his car repaired at Canadian Tire and that he phoned his mother in Vancouver from Canadian Tire. He referred to the purchase of red Christmas stockings at a price of $0.99 each from the Safeway store adjacent to the Canadian Tire. He said that these stockings were bought during two visits that he made to Safeway while he was waiting for his car to be repaired. The memos continue with the account of his visit to two hospitals. The memos refer to a conversation that Thomas Sophonow had with the nurse whom he thought was a First Canadian. He wrote that he had talked to her and learned that she had a son called Phillip who was then five years of age. Whether she appeared to him as a First Canadian rather than as a woman from the Philippines, it is clear that he was describing someone whom he perceived as different and who had a 5 year old son named Phillip.

The memos contain so much detail and so much information unique to Thomas Sophonow that he could not have gained it in any manner other than by his attendance at Canadian Tire, the Safeway store and various hospitals. The alibi evidence was such that, not only would it have raised reasonable doubt, but, beyond question, it could have established Thomas Sophonow's innocence.

Police witnesses and Crown Counsel took the position that the alibi was revealed late and put forward in "dribs and drabs". Certainly, it should have been revealed at the earliest possible opportunity. It was observed that nothing was said by Thomas Sophonow either to Detective Barnard or to Sergeants Wawryk or Paulishyn on this subject. They observed that the alibi kept changing to meet the circumstances and the evidence brought forward. It was for these reasons that the police and the Crown were highly sceptical of the alibi evidence.

For example, it is said that Thomas Sophonow did not mention meeting a nurse at the Victoria Hospital. Rather, he stated that he met a security guard on the main floor then went to the other hospitals. Further, it was pointed out that it was only after Nurse Navoa had testified that he changed his description of her from Native Canadian to a nurse of Philippine origin.

We now know that the alibi evidence was true and that it does, indeed, establish the innocence of Thomas Sophonow. It is necessary to review the circumstances in which the alibi was given and the investigations that were undertaken with regard to it.

Timing of the Disclosure of the Alibi

Thomas Sophonow did not feel threatened by Detective Barnard. It is unfortunate that he did not reveal to him his actions on the 23rd of December. He could have told him of his time at Canadian Tire, where his car was repaired, of his purchases at the Safeway store and his visits to the hospitals. If he had revealed his actions, it might have been very helpful to all concerned. With regard to the interview conducted by Sergeants Wawryk and Paulishyn, I need simply repeat that the circumstances, including the strip search, had such a traumatic effect on Thomas Sophonow that I am not surprised that he did not reveal the alibi evidence to them. In any event, it should be kept in mind that there is no need or obligation to disclose an alibi until such time as the accused is aware of the case that he must meet. It is certainly clear, in this case, that there was no obligation resting upon Thomas Sophonow to disclose the alibi before the preliminary hearing when he and his counsel were aware of the case that had to be met.

At the conclusion of the preliminary hearing, Thomas Sophonow did make a statement which outlined his attendance at Canadian Tire. In December 1981, Thomas Sophonow did not wear a watch. When he left Canadian Tire, the employees were mopping up the garage and he probably assumed that it must have been the closing time of 9:00 o'clock. He stated that his was the last car to be repaired. He referred to the fact that someone, who we now know is Mrs. Peasgood, was having her car repaired before his. She was there with her young daughter waiting for her car. In one of his trips to Safeway store, he purchased a sandwich and gave half of that sandwich to Mrs. Peasgood's daughter. At the time of the preliminary hearing, the evidence indicated that the time the murder took place was around 8:00 p.m. This was the crucial time that had to be accounted for. It is true that, in his statement from the prisoner's box, he did not refer to his trips to the hospitals. However, it was not then thought necessary to account for his time later than 8:00 p.m. Certainly, there is a lengthy referral to his trips to the hospital in his written memoranda to his counsel of the 16th and the 22nd of March.

The atmosphere of distrust which existed in 1982 between Crown, Police and Defence Counsel

Mr. Pollack was asked at the Inquiry why the alibi evidence had not been completely disclosed at the time of the Preliminary Hearing. He stated that in 1982 there was a strong element of distrust that existed between police, Crown Counsel and Defence Counsel. That this element of mistrust existed was confirmed both by police officers and Crown Counsel. It was no doubt the combination of the element of mistrust and the fact that Mr. Pollack could not have been aware of the case that had to be met before the preliminary hearing which delayed the disclosure of the alibi. I can find nothing reprehensible in this conduct. On this issue, Crown Counsel Whitley very fairly stated that it was appropriate for the defence to wait until the preliminary hearing before disclosing the alibi evidence. (Inquiry, Vol. 49, page 8658).

Past actions of the police, Crown Counsel and Defence Counsel undoubtedly contributed to the atmosphere of distrust. I have referred to the actions of the police and Crown Counsel that contributed to producing this unfortunate state of affairs. There is as well an

example of the actions of Defence Counsel that must be considered as contributing to the unfortunate atmosphere. One memo indicates that Mr. Brodsky spoke to his client during an evening adjournment. At the time, Thomas Sophonow was still being cross-examined. It is always preferable if counsel do not speak at all to their clients during the cross-examination or before any re-examination has been completed.

On some occasions, it may be necessary to speak to a client during an evening adjournment about administrative matters or, for example, issues of timing relating to the calling of other witnesses. The conversation should be immediately disclosed to Crown Counsel or, preferably, permission and consent obtained from the Trial Judge and Crown Counsel before speaking to the witness. Mr. Brodsky's memo indicated that his conversation related to the cross-examination. If it did, it constituted a most unfortunate breach of ethics and a departure from the high standards expected of all counsel. Certainly, this must have been a rare departure for Mr. Brodsky who, like Mr. Dangerfield, is a Life Bencher enjoying the respect and admiration of the legal profession in Manitoba.

It is unfortunate that this element of mistrust existed and obviously affected the administration of justice in 1982. This is a cancerous element that can surface at any time and efforts should be made by all parties to eliminate it.

Police awareness of aspects of the alibi evidence

Prior to the Preliminary Hearing in April of 1982, the police were in possession of the telephone records which revealed that Thomas Sophonow had, indeed, made a call to his mother in Vancouver from the Canadian Tire store which lasted from 7:52 p.m. – 7:56 p.m. on the 23rd of December.

Certainly, by the 27th of May 1982, the police had completed much of their investigation of the alibi evidence. By that date, they had talked to Mr. Bialek, the manager of the Canadian Tire store and had a copy of the invoice for the work done on Thomas Sophonow's vehicle. They had as well met with Mr. Buzahora of the Safeway store regarding the sale of red mesh Christmas stockings. He confirmed that on December 23rd their price was $0.99, as Thomas Sophonow had stated.

On the 30th of May, Sergeant Biener interviewed Susan O'Rourke (now Susan Danyluk) of the Safeway store. At this time, she confirmed that she had sold a number of Christmas stockings to a man she described as being 25 years of age, about six feet tall and untidy in his appearance. She said that the man had told her that the stockings were for some kids in the hospital (Inquiry, Exhibit 150 – Police Supplemental Report, Vol. 17A , page 1043).

On Friday, June 11, Mr. Smith of Canadian Tire was interviewed by Sergeant Wawryk who concluded that Thomas Sophonow must have been lying about the time that he spent at the garage.

In a supplemental report, Sergeant Biener noted that Susan O'Rourke recalled serving a man who purchased a number of Christmas stockings a day or two before Christmas. From the description that she gave, Sergeant Biener thought that there was no doubt that it was Thomas Sophonow.

In that same report, Sergeant Biener referred to an interview with Mrs. Peasgood. She stated that she saw a man in the waiting area of the Canadian Tire and that he had given her daughter something to eat. She also observed a large shopping bag in the area where Thomas Sophonow was sitting. She noted that the bag was full. This was significant because the evidence was that the second and last purchase of stockings was put in a shopping bag.

In a supplemental report of the 19th of June, 1982, Sergeant Biener referred to his attendances at the Victoria Hospital and St. Boniface Hospital. At the Inquiry, he indicated that he had attended at other hospitals as well at about the same time. He noted in the report that the results had been the same at every hospital. Namely, staff members remember articles, including Christmas stockings, finding their way up to the children's ward. However, their origin was unknown. Further, most hospitals and, most particularly St. Boniface, kept a record of persons dropping off gifts so they could acknowledge and thank the donor. Thomas Sophonow's name did not appear in the record nor did it appear that anyone could identify Thomas Sophonow as the person distributing the stockings. (Inquiry, Exhibit 149 – Police Supplemental Report, Vol. 16B, page 837 and Inquiry, Vol. 40, page 7628).

Sergeant Biener took possession of a red mesh stocking from St. Boniface Hospital. It apparently belonged to a very sick little girl who had received it before Christmas. (Inquiry, Exhibit 167 – Notes of Sergeant Biener, Document Brief, Vol. 15, page 00046). Sergeant Biener took the Christmas stocking to Mr. Buzahora of the Safeway store and learned that it was of the type that the Safeway store sold.

Thus, by the end of May or early June 1982, the police were aware of most of Thomas Sophonow's alibi, including the purchase of the Christmas stockings and visits to the hospitals. Nevertheless, as a result of their inquiries, they came to the conclusion that there was no evidence supporting his alibi.

Although the full alibi was not given by Thomas Sophonow until he testified on November 2nd, 1982, the police were aware of the essential elements of the alibi and had investigated them long before that time. Although Thomas Sophonow's evidence may have been a surprise to Mr. Dangerfield, it could not have come as a surprise to the police. At a meeting of Crown Counsel and police investigators on November 2nd, 1982, Sergeant Biener produced the red mesh stocking that he had taken at St. Boniface Hospital. That he did so is apparent from his notes. It also appears that the stocking was used by other investigators in the course of their inquiries at various hospitals.

Although the police were aware that Thomas Sophonow stated that he had his car repaired at Canadian Tire, they discounted this evidence because, in their view, there was sufficient time for him to pick up the car when it had been repaired by 8:00 p.m. and

drive to the Ideal Donut Shop and commit the murder. They had as well checked the Safeway store and determined that Thomas Sophonow had, indeed, bought several red mesh stockings, apparently for distribution at hospitals. However they discounted his position that he had attended at the hospitals and distributed the stockings. They did so because of the "late disclosure" of the alibi and the fact that their inquiries at the hospitals indicated that no one could identify Thomas Sophonow as delivering the stockings, or even that he had attended at the hospitals.

There were additional problems that concerned them. Ms Joan Barrett, when she testified as a surprise witness, stated that Thomas Sophonow spoke to her at the Victoria Hospital and she gave him directions to other hospitals. This was contrary to Thomas Sophonow's position that he had spoken only to security guards and not anybody on the second floor at the Victoria Hospital.

Further, although Nurse Navoa confirmed in her testimony that she did have a son Phillip, who was five years old in December, 1981, she did not recall either asking for a stocking or Thomas Sophonow speaking to her. It was only by the time of the third trial that she came forward and revised her evidence. By then, she did recall speaking to a man, no doubt Thomas Sophonow, and asking for a stocking for her son.

It must be remembered that the police investigation of the alibi evidence was in many respects helpful to Thomas Sophonow. For instance, the witnesses Susan Danyluk (formerly Susan O'Rourke) and Jeanine Sahulka (formerly Jeanine Gunn) were located by the police and were certainly helpful to Thomas Sophonow's position on the alibi.

Mr. Whitley testified that he thought that the alibi had been concocted. In his view, it lacked "the ring of truth" (Inquiry, Vol. 49, page 8657). However, he was not aware of the police supplemental report in which Sergeant Biener indicated that Thomas Sophonow was no doubt Susan O'Rourke's customer who purchased the stockings. (Inquiry, Vol. 49, page 8660). Nor did Mr. Whitley know that Sergeant Biener had obtained a red mesh stocking from St. Boniface Hospital and that Mr. Buzahora of the Safeway store stated that it was the same type which had been sold by Safeway for $0.99 the 23rd of December 1981. Mr. Whitley stated that, if he had known this, it may well have changed his opinion and that he would have had doubts as to the alibi being a recent concoction. (Inquiry, Vol. 49, page 8667).

The alibi evidence was of great importance in this case. Not only could it have raised a reasonable doubt as to the guilt of Thomas Sophonow, it could have established his innocence. It has now been demonstrated that the alibi evidence is true. Thomas Sophonow did distribute the stockings to hospitals. This, of course, made it impossible for him to have killed Barbara Stoppel.

RECOMMENDATIONS

There is a particularly tragic aspect of this case. The alibi put forward by Thomas Sophonow was not and could not have been the product of a recent concoction. He

outlined it in considerable detail for his counsel within days after his arrest. However, by the time it was disclosed, it was thought by the police and Crown Counsel to be a tardy and incomplete disclosure. Part of the reason for this was the lack of trust that existed between Defence Counsel and the police and Defence Counsel and Crown Counsel. No doubt, Defence Counsel were concerned that the police might by their words and actions encourage the alibi witnesses to change their account of events. On the other side, the police were undoubtedly suspicious of any alibi and concerned that it was fabricated and recently concocted in order to meet the Crown's case.

Crown Counsel and Defence Counsel agreed that an alibi defence was relatively rare. Thus, their investigation would not unduly tax the resources of the police department. It follows that great care should be taken in the interviews of alibi witnesses. Those interviews should be videotaped or, at the very least, audiotaped.

The recommendation that I make to alleviate the atmosphere of suspicion is as follows:

- **It may seem trite but I recommend that regular meetings be held once or twice a year for the Crown and Defence bar. At those meetings, counsel on both sides could put forward their problems, discuss them and seek mutually satisfactory solutions to them. At some of these meetings, high-ranking police officers should attend and explain their position with regard to the issues raised. Some members of the judiciary and, perhaps, the media might be invited to attend occasionally so that all would be aware of the problems and could contribute to their solution. In that way, solutions satisfactory to all concerned could be reached. The entire administration of justice has too much at stake to permit any feelings of mistrust to fester and spread, thereby jeopardizing the ability of the courts to arrive at a fair and just result.**

The recommendations that I would suggest in connection with alibi witnesses and their investigation by police are as follows:

1. **The alibi defence should be disclosed within a reasonable time after the Crown disclosure has been completed and the Defence has reviewed it and is in a position to know the case that must be met. When that disclosure should be made by the Defence will vary from case to case. It will obviously depend upon the extent of the Crown disclosure, how long it will take the Defence to review that disclosure and how quickly Defence Counsel can prepare the alibi evidence disclosure. To the extent that it is possible, the disclosure of the alibi evidence should be in the form of statements signed by the witnesses. Alibi evidence may well establish innocence and the Defence should spend all the time and energy required to put forward a complete and detailed position on the alibi evidence.**

2. **How should the police investigate the alibi evidence? Obviously, it is incumbent upon them to ensure that the alibi defence is credible. However, because of the importance of the evidence, the same care**

should be taken in interviewing the alibi witnesses as is taken with the interviews of suspect. That is to say, wherever possible, the interview should be videotaped and, if that is not feasible it must, at the very least, be audiotaped. The entire interview must be on tape. Anything which is alleged to have been said that is not transcribed should be considered inadmissible.

The interviewing of alibi witnesses should be undertaken by officers other than those who are the investigators of the offence itself.

It has been suggested that it should be done by members of other police forces. However, this is cumbersome and may be unnecessarily expensive. If the interview is conducted by an officer other than one involved in the investigation of the crime itself and if the interview is videotaped or audiotaped, this will provide sufficient safeguards.

3. **The alibi witnesses should not be subjected to cross-examination or suggestions by the police that they are mistaken. The alibi witnesses should be treated with respect and courtesy. They should not be threatened or intimidated or influenced to change their position. However, I agree that it is appropriate for the police to instruct the witnesses that it is essential that they tell the truth and that a statement can be used as proof of its contents. The witnesses should be advised that they should be careful to tell the truth and of the consequences of a failure to do so.**

4. **If, as a result of the disclosure of the alibi and the interviewing of the alibi witnesses, the Crown deems it appropriate to conduct further interviews of Crown witnesses expected to be called at the trial, a procedure similar to the interrogation of the alibi witnesses should be followed. That is to say, if there is to be a further interview of a Crown witness, it should be conducted by someone other than the investigating officers. The police conducting the interview should make every effort to avoid leading questions or questions which suggest the position of the police on the case.**

4(a) **It is essential that any further interviews of Crown witnesses following the disclosure of the alibi evidence should as well be videotaped or, if that is impossible, audiotaped. Every portion of the interview should be transcribed. Any statement alleged to have been made by the witness and which does not appear on the tape recording should be deemed to be inadmissible.**

JAILHOUSE INFORMANTS, THEIR UNRELIABILITY AND THE IMPORTANCE OF COMPLETE CROWN DISCLOSURE PERTAINING TO THEM

Jailhouse informants comprise the most deceitful and deceptive group of witnesses known to frequent the courts. The more notorious the case, the greater the number of prospective informants. They rush to testify like vultures to rotting flesh or sharks to blood. They are smooth and convincing liars. Whether they seek favours from the authorities, attention or notoriety they are in every instance completely unreliable. It will be seen how frequently they have been a major factor in the conviction of innocent people and how much they tend to corrupt the administration of justice. Usually, their presence as witnesses signals the end of any hope of providing a fair trial.

They must be recognized as a very great danger to our trial system. Steps must be taken to rid the courts of this cancerous corruption of the administration of justice. Perhaps, the greatest danger flows from their ability to testify falsely in a remarkably convincing manner. In this case, it will be seen that an experienced detective thought that Mr. Martin, a very frequent jailhouse informant with a conviction for perjury, was a credible witness. He lied in this case and he has testified in at least nine other cases, undoubtedly with the same degree of mendacity. Jailhouse informants are a festering sore. They constitute a malignant infection that renders a fair trial impossible. They should, as far as it is possible, be excised and removed from our trial process.

Jailhouse informants are a uniquely evil group. Justice Kaufman in the Morin Inquiry dealt extensively with jailhouse informants and the harm that they occasion. His thoughtful and helpful recommendations are carefully set out in his report. I will adopt them but go still further in my recommendations on this subject.

This case provides a classic example of the use and the pernicious effect of their testimony. Mr. Peter Neufeld in his book, "Actual Innocence", (Inquiry, Exhibit 139) at page 361 studied 74 cases in which DNA had established that an innocent person had been wrongfully convicted. In 19% of those cases, jailhouse informants were used.

Let us consider the informants put forward in this case.

Thomas Cheng

Mr. Cheng testified in the first and second trials and, despite the objection of Defence Counsel, his evidence was read in at the third trial. Mr. Cheng testified that Thomas Sophonow told him that he had tried to rob a donut shop. Mr. Cheng stated that Thomas Sophonow said that the girl who was in the shop was to tell him where the rest of the

money was located. She was to do this because they were friends. When she did not do this, it made him mad and he took her to the washroom and used a rope to kill her. (Inquiry, Exhibit 158 - Document Brief 7 re Police Investigation Review, page 2).

Mr. Brodsky, Counsel for Thomas Sophonow in the second and third trials, suggested to Mr. Cheng that he had made a bargain with the police in exchange for his testimony. (Inquiry, Exhibit 4 – 1983 Trial Transcripts, pages 1108, 1109).

Mr. Dangerfield was then permitted to re-examine to determine Mr. Cheng's motive for testifying. Mr. Cheng stated that he had not asked for any consideration in return for his story. Aside from the hope that he would be treated in a more kindly manner, the only other reason that motivated him to come forward was that it bothered him to see a murderer on the street. (Inquiry, Exhibit 4 – 1983 Trial Transcripts, pages 1113, 1114).

When Mr. Cheng was asked whether he understood that the police would drop some charges or do various things that would of assistance to him he replied: "sometimes I think so but that's not the main reason I approached the police" (Inquiry, Exhibit 4 – 1983 Trial Transcripts, page 1120). He was then asked if he had told the police officer that he wanted some favourable consideration for telling the story and he replied "no".

This was not true. Mr. Cheng told Sergeant Huff, the polygraph operator, that he considered himself to be a Christian and he believed that a Christian belief does not allow for the taking of a life. This was put forward as one reason that he advised the police of the conversation with Thomas Sophonow. However, he stated that the single most important reason for testifying was that he wished to get out of jail and have the charges against him dropped. He said that he was afraid of having a record as it would prevent him from re-entering the United States and that he would be deported back to Hong Kong. He also stated that he felt that he had brought shame to his family. (Inquiry, Exhibit 158 - Document Brief 7 re Police Investigation Review, Tab 3). Although this was all set out in the police material which was provided to Crown Counsel, it was not disclosed to Defence Counsel at any of the trials. Without that report, Defence Counsel were unable to effectively cross-examine Mr. Cheng. In the absence of that report, Mr. Cheng would appear to have come forward for nothing but the highest and best motives. The jury would assess his credibility based upon the praiseworthy motives that he gave for testifying.

Yet Mr. Cheng was facing 26 counts of fraud which were withdrawn by the Crown. Further, he was released from custody on the understanding that he would be expected to testify at the third trial. Although he did not appear for the third trial, his evidence was read in.

The report of Sergeant Huff was of fundamental importance to arriving at the truth. If it had been disclosed to Defence Counsel, Mr. Cheng could have been shown as the liar that he was. Crown Counsel agreed that this was the type of material that ought to have been disclosed to Defence Counsel in 1982 and 1985. It was not and it should have been. This failure to disclose, along with others referred to later, constituted a very serious error. They demonstrate that there was not a fair disclosure made based on the standards

of 1982. Those failures further indicate that there could not have been a fair trial based on the standards of that time.

On behalf of the police, it was submitted that they did all that was appropriate for the times in checking the reliability of Mr. Cheng. They required him to take a polygraph test and confirmed that he had been seen talking to Thomas Sophonow. For the police, it was contended by their counsel that all relevant documents were given to the Crown. It was argued, with justification in my view, that it was for the Crown to make the decision whether to call Mr. Cheng and for the Crown to disclose such documents as they deemed appropriate to the Defence. Even if it is assumed that the police did all that was required of them, perhaps what is most significant is that an extremely unreliable witness was called who must have had a devastating effect upon the result of Thomas Sophonow's trial. Further, as a result of the failure to disclose Mr. Cheng's statement to Sergeant Huff, the Defence was denied the opportunity to properly and adequately cross-examine Mr. Cheng.

Mr. Dangerfield, Senior Crown Counsel in the first and second trials, agreed at this Inquiry that he would have read the polygraph report before Mr. Cheng testified. (Inquiry, Vol. 47, page 8158). He also agreed that, in his taped conversation with Mr. Brodsky concerning Mr. Cheng, it did appear that he was referring to some of the contents of Sergeant Huff's report. (Inquiry, Vol. 47, page 8164). He went on to say that he had no independent memory of reading that report. Yet he did concede that some underlining, which can be seen in the report, would undoubtedly have been made by someone, other than the police, reading the report. He conceded that, if he had been given the report, he would certainly have seen it before Mr. Cheng testified. He also agreed that the Defence should have had the report but he suggested that he certainly did not keep it from Mr. Brodsky deliberately. I certainly accept that he did not deliberately keep the report from Mr. Brodsky. However, the fact remains that it should have been produced to him and it was not. The consequences of this failure to disclose must have been serious. Mr. Cheng would appear to the judge and jury to have come forward and testified for the highest and most praiseworthy motives. This was false and should have been known to the Crown to be false. The disclosure of the report would have afforded the Defence the opportunity to demonstrate the falsity of Mr. Cheng's evidence.

At the third trial, two additional jailhouse informants were called, Adrian McQuade and Douglas Martin. Let us consider first Adrian McQuade.

Adrian McQuade

Adrian McQuade was well known to the Winnipeg Police as an informant. On behalf of the police, it was submitted that informants must give reliable information to the police or they could not be recognized as informants. Therefore, it was submitted that it was appropriate to put an informant such as Mr. McQuade forward as a witness. When the circumstances surrounding the so-called confession of Thomas Sophonow to Mr. McQuade are reviewed in their proper context, it can be seen how very unreliable his testimony was. Sergeant Biener testified that "he wanted the Crown to know what they were dealing with in Mr. Adrian McQuade". (Inquiry, Vol. 50, page 7709). As a result,

the police made the Crown aware of the following circumstances pertaining to Mr. McQuade:

1) Upon being jailed on a material witness warrant, Mr. McQuade had threatened to sabotage the Crown case and intentionally perjure himself if necessary;

2) A taped conversation between Mr. McQuade and Officers Daher and Smith demonstrated clearly that Mr. McQuade was an informant for the Winnipeg Police and was dealing with them on at least five matters;

3) Mr. McQuade had been told that everything that he said to Officers Daher and Smith had been recorded and that if he did not testify voluntarily against Thomas Sophonow he would be treated as a hostile witness and the tape recording would be played in Court. This, of course, would expose him as an informant with all the dangers which that entails.

Sergeant Biener testified that all this information was disclosed to Crown Counsel. Obviously, this information was important to those who were assessing Mr. McQuade's credibility. Unfortunately, it was not disclosed to the Defence and, as a result, the jury was not made aware of the great frailties and apparent falsehoods in his testimony.

There is an extremely worrisome aspect of Mr. McQuade's evidence. Mr. Whitley, toward the beginning of his examination of Mr. McQuade in the third trial, referred to the March 19, 1982, date when Thomas Sophonow allegedly made his confession. The following appears from the transcript of the third trial.

"Q: Mr. McQuade I want you to think back to 1982, March 27. I understand on that date you were arrested on the charge break entering and theft and possession of stolen goods; is that correct?

A: Yes.

Q: And the police took you where as a result of the arrest?

A: At the Public Safety Building.

Q: How long did you stay in detention at the Public Safety Building?

A: About one weekend."

Mr. McQuade then testified as to the confession that he stated had been made that very weekend by Thomas Sophonow.

However, the evidence is very clear that Mr. McQuade was arrested by Constable Luczenczyn on the 27th of March, 1982. He attempted to exchange information about drugs for a deal pertaining to his charges. This was refused. He then offered to go into a cell in "B" Block with Thomas Sophonow whom he knew. The police accepted this offer and arrangements were made to place him in the cell with Thomas Sophonow. He was asked to talk to Thomas Sophonow and to get any information he could including, if possible, an admission. The following Monday, March 29, Mr. McQuade attended Court

and Constable Luczenczyn met with him. At that time, Mr. McQuade advised the Constable that, although he had spoken to Thomas Sophonow about four times, "the two did not talk of the murder". All of this information was put into a special report which is the Inquiry Exhibit No. 111. The report is, of course, of great significance. It demonstrates that Mr. McQuade, at that time, was denying that he had ever received the confession which he recited at the third trial.

Let us consider what Mr. Whitley knew of Mr. McQuade before he called him as a witness and what information should have been disclosed to Defence Counsel in this regard in 1985.

It is clear that Mr. Whitley knew of the tape recording made by Officers Daher and Smith of their talk with Mr. McQuade. Sergeant Biener's notes reveal that he delivered a transcript of this recording to Mr. Whitley and Mr. Gosman at 2:00 p.m. on January 16th, 1985. Mr. Whitley admitted that he knew Mr. McQuade feared for his life (as a result of being labeled "a rat") and knew Mr. McQuade had threatened to turn on the police and go to the other side. He further conceded that Mr. McQuade had been forced to testify. He stated: "we compelled him to testify, yes". This was accomplished, of course, by threatening Mr. McQuade with labeling him has a hostile witness and playing the tape in Court. (Inquiry, Vol. 50, page 8766).

When Mr. Whitley was asked about the Luczenczyn report, which indicated that there had been no confession, he stated that he was not aware of it. (Inquiry, Vol. 50, page 8768). However, when he was told that Sergeant Biener had submitted it to him, he agreed that this was a fair assumption and that the Luczenczyn report was part of the material he would have looked at in assessing Mr. McQuade's credibility. (Inquiry, Vol. 50, page 8770). With the passage of years, it can be appreciated that Mr. Whitley would not recall the Luczenczyn report. Nonetheless, it is also clear that he was in possession of it and that he would have read it and used it in assessing Mr. McQuade's credibility. When questioned as to whether it should have been disclosed to Defence Counsel on the basis of the practice in 1985, he stated that there was no doubt that Defence Counsel should have had the Luczenczyn report in order to cross-examine Mr. McQuade. He stated: "I can't say at the time if that happened". However, it does appear from the transcript that Mr. McQuade was not cross-examined on the Luczenczyn report. Yet, obviously, it would have been of fundamental importance to the Defence. I cannot imagine that Mr. Brodsky would not have cross-examined Mr. McQuade extensively with regard to it if it had been disclosed to him.

Mr. Whitley went further and agreed that the report should have been disclosed even in 1985 because it is: "such a ..... departure from what he had testified to it would be unfair for this person to testify as if this didn't exist". (Inquiry, Vol. 50, page 8772). Mr. Whitley stated that he didn't know why the report was not disclosed to Mr. Brodsky. His response was: "well I don't know, I don't have an answer for that". (Inquiry, Vol. 50, page 8773).

Unfortunately, the matter raises still more problems. Mr. Brodsky was told by Mr. Whitley that Mr. McQuade's statement was being taken "as we speak". Mr. Brodsky testified, referring to the Luczenczyn report:

> **"Brodsky:** I never heard about it. I didn't know about it. I was told it did not exist, because as I've already said I was told the statement was the only one that was being taken.
>
> **Com. Cory:** I'm sorry Mr. Brodsky who told you that?
>
> **Brodsky:** The Crown.
>
> **Com. Cory:** The Crown? Mr. Whitley?
>
> **Brodsky:** Yes.
>
> **Com. Cory:** Mr. Whitley?
>
> **Brodsky:** He told me that the statement was being taken as we spoke and that was the only statement I knew about. I did not know about an earlier statement."

Mr. Brodsky prepared a memorandum and placed it in his file. It indicated that he was told by the Crown that Mr. McQuade's statement was taken for the first time on January 30th, 1985. (Inquiry, Vol. 57, page 10049). Thus, Mr. Brodsky was not aware either of the Luczenczyn report or the transcript of the conversation between Mr. McQuade and Officers Daher and Smith.

Mr. Brodsky, of course, confirmed that he would have liked to have seen the transcript from Officers Daher and Smith of the McQuade conversation. He further testified that he would have expected to be given something as important as the Luczenczyn report. (Inquiry, Vol. 57, page 10160).

I should have mentioned that the very fact that the Luczenczyn report was found in the Crown's files speaks volume for the candour and courage of Sergeant Biener. The report was probably only known to three people, Inspector DePourcq, Sergeant Biener and Mr. Luczenczyn. It was a document that the Crown would not normally have received. Yet Sergeant Biener realized that the Luczenczyn report was relevant and exceedingly important to any assessment to be made of Mr. McQuade. That the Luczenczyn report was made available to the Crown is a credit to Sergeant Biener's sense of fairness and integrity. He realized its relevance and importance and made certain that it was disclosed to Crown Counsel. It is unfortunate that a document as important as that was not, as it was conceded it should have been, disclosed to Counsel for the Defence. This meant that there could not be a fair trial for there could not be an appropriate assessment made by the jury of Mr. McQuade's credibility, tested by cross-examination with reference to the Luczenczyn report and the Daher and Smith transcript.

Douglas Martin

Another jailhouse informant called at the third trial was Douglas Martin. He is a prime example of the convincing mendacity of jailhouse informants. He seems to have heard

more confessions than many dedicated priests. He has testified as a jailhouse informant in at least nine cases in Canada. When he came forward, the police learned that he certainly did have a significant record including a conviction for perjury. Inquiries were made regarding this conviction but it was thought that there was a reasonable explanation for it, namely, that threats had been made to his wife and that he perjured himself in order to protect her. The danger of jailhouse informants is emphasized by the assessment of Sergeant Paulishyn, at that time an experienced police officer. He thought that Mr. Martin was a credible witness and that he came across as a truthful type. (Inquiry, Vol. 41, pages 6570, 6571). To his credit, Sergeant Paulishyn carefully advised the Crown of Mr. Martin's record.

Findings Regarding the Use of Jailhouse Informants in the Thomas Sophonow Trial

It is apparent there was nothing untoward about the use of jailhouse informants in 1982 and 1985. The Winnipeg Police did attempt to investigate to assure themselves of the reliability of these witnesses and, on this issue, no fault can be attached to the work of the police. What the case does demonstrate is the ease with which experienced officers and Crown Counsel can be fooled by jailhouse informants as to their credibility and apparent truthfulness.

The very real problem arose in this case from the failure to disclose to Defence Counsel important aspects of the material regarding the jailhouse informants, which Crown Counsel readily agreed should have been disclosed. If that had been done, cross-examination would have helped to demonstrate the unreliability of these witnesses. The material was in the possession of the Crown. Crown Counsel agreed that it should have been disclosed to the Defence. It was not. This was a serious error on the part of the Crown and the Crown must accept responsibility for it. The error contributed significantly to the wrongful conviction of Thomas Sophonow.

Some General Comments on Jailhouse Informants

The manner in which jailhouse informants rush to give testimony in a prominent case is demonstrated by the Thomas Sophonow trial. Before the third trial, no less than 11 jailhouse informants had volunteered their services. The police and the Crown took pride in narrowing it down to the three who were called on the basis of their "credibility and reliability". Yet how deceptive and untruthful they were and how very unreliable they were. As a group, they have an unsurpassed record for deception and lying. As a group, they do merit very special attention and caution must be exercised in the use of their evidence.

It is true that Justice Dickson, in *Vetrovec v. The Queen*, [1982] 1 S.C.R. 811, cautioned against placing witnesses in pigeon holes so that only some classes of witnesses would require warnings regarding their testimony. Nonetheless, jailhouse informants are in a special class with the demonstrated ability to mislead and deceive the most discerning

and experienced observers. They have, as a class, established a unique record of consistently giving false testimony. They must be given special attention and their evidence should generally be excluded and only be admitted in very rare cases. On those rare occasions that it is admitted, it must be approached with the greatest caution.

It is not unduly difficult for jailhouse informants to obtain information, particularly in high profile cases, which would appear to come only from the perpetrator of the crime. As a result, they appear to be reliable and credible witnesses. This case demonstrates that experienced police officers considered very unreliable informants to be credible and trustworthy. Crown Counsel obviously thought that they were credible witnesses who should be put forward. If experienced police officers and Crown Counsel can be so easily taken in by jailhouse informants, how much more difficult it must be for jurors to resist their blandishments. How difficult, if not impossible, it is for jurors to appreciate the polished and practiced facility with which they deliver false testimony. Jailhouse informants are, indeed, a dangerous group. Their testimony can all too easily destroy any hope of holding a fair trial and severely tarnish the reputation of Canadian justice.

There is always a very natural and healthy tendency to sympathize with the victims of the crime and with their families. There is as well a very real concern for the safety of society. Citizens of Canada have every right to be protected from perpetrators of crimes, particularly of violent crimes. The incarceration of those who commit violent crimes is the only feasible manner of protecting society. However, in the desire to protect society, we cannot compromise the principle of a fair trial. Our criminal justice system is based upon the principle that those accused of crimes are entitled to and will always receive a fair trial.

In the United States, the miscarriages of justice occasioned in whole or in part by jailhouse informants have been set out in the book, "Actual Innocence", co-authored by Peter Neufeld. In Canada, Justice Kaufman considered the same issue and made strong recommendations in the Morin Inquiry that would limit the use of these informants and require strong cautionary instructions to the jury with regard to their testimony. By now it should be clear that jailhouse informants are so unreliable that they tend to undermine criminal trials.

Their testimony has all too often resulted in a wrongful conviction. When such a miscarriage of justice occurs, the entire system of justice suffers. Indeed, the entire community suffers as a result of the demonstrated inability to provide the accused with a fair trial. How many wrongful convictions must there be before the use of these informants is forbidden or, at least, confined to very rare cases. In the rare case that they are called, their testimony should automatically be subject to the strongest possible warning to jurors to approach it with great caution. Lawyers, particularly Crown Counsel and Judges, must be made aware of the irreparable damage that these informants can cause to the administration of justice in Canada.

U.S. Studies on Jailhouse Informants

This conclusion is supported by studies done of jurors in the United Stated regarding the effects of a confession made to a jailhouse informant. Mr. Peter Neufeld gave impressive testimony with regard to this subject. His studies reveal that, in roughly 20% of the cases that were established to be wrongful convictions of innocent persons, jailhouse informants were used by the prosecution.

Further, it is unfortunately apparent that jurors give great weight to these alleged confessions. American studies indicate that, to the average juror, there is not much difference between the manner in which they receive and weigh a confession given to a police officer and a confession given to a jailhouse informant. (Inquiry, Vol. 56, page 9891). It is very easy to build a sufficiently compelling argument to convince the jury that the informant is a credible witness. (Inquiry, Vol. 56, page 9983). This occurs despite the fact that the experience in the United States has been that the same jailhouse informant may testify in numerous cases. Mr. Martin demonstrates the Canadian tendency to follow this pattern. It was Mr. Neufeld's recommendation that, because jailhouse informants are so unreliable and their testimony has such a devastating effect, they should not be used in any circumstances. Further, he noted that the testimony of multiple jailhouse informants in a case has a cumulative effect on the jury listening to the evidence. (Inquiry, Vol. 56, page 9909). He demonstrated, by means of a well documented example, how easy it was for jailhouse informants to obtain information which would appear to a juror could only have come from the perpetrator of the crime.

There have been recommendations made in the United States to exclude all evidence from jailhouse informants. The Morin Inquiry and the Sophonow Inquiry have demonstrated that their testimony gives rise to the same dangers in Canada as it does in the United States.

What Have the Studies of Jailhouse Informants Revealed?

The findings can be summarized in the following manner:

1) Jailhouse informants are polished and convincing liars.
2) All confessions of an accused will be given great weight by jurors.
3) Jurors will give the same weight to "confessions" made to jailhouse informants as they will to a confession made to a police officer.
4) "Confessions" made to jailhouse informants have a cumulative effect and, thus, the evidence of three jailhouse informants will have a greater impact on a jury than the evidence of one.
5) Jailhouse informants rush to testify particularly in high profile cases;
6) They always appear to have evidence that could only come from one who committed the offence.
7) Their mendacity and ability to convince those who hear them of their veracity make them a threat to the principle of a fair trial and, thus, to the administration of justice.

As a result of the foregoing, I have some hopes, suggestions and recommendations to put forward. I would suggest that Trial Judges and Appellate Court Judges should recognize the dangers that arise in hearing the testimony of these informants. I therefore most earnestly and respectfully express the hope that the occasion will arise for the Supreme Court of Canada to consider again the issue raised in *R. v Brooks,* [2000] 1 S.C.R. 237. It may be that the studies done in the United States, together with the Morin and Sophonow Inquiries, have now sufficiently demonstrated the tragic dangers occasioned to the administration of justice by the testimony of jailhouse informants in light of the reliance jurors place upon alleged confessions made to these most unreliable of witnesses. Later, I will recommend that, as a general rule, the evidence of jailhouse informants should be inadmissible. However, in very rare cases and subject to stringent conditions, the evidence of a jailhouse informant may be admitted.

As an example of the rare case in which a jailhouse informant might be permitted to testify would be a situation where a kidnapping has taken place and only the kidnapper could possibly know the location of the victim. Should a jailhouse informant learn, as a result of a statement made by the accused person, of the whereabouts of the kidnapped victim and that location is confirmed by the police investigation, that evidence might be admissible. Generally, the evidence proposed to be given by the jailhouse informant should in itself relate to a very major aspect of the crime and be of such a unique and detailed nature that only the culprit would know it. That evidence would have to be independently confirmed by the police before the Crown should consider putting the informant forward as a witness.

Mr. Finlayson, Assistant Deputy Attorney General, gave very helpful evidence with regard to this issue. It is very clear that Manitoba has commendably taken giant steps forward with regard to significantly restricting the use of jailhouse informants. Indeed, the Manitoba Guidelines may lead the country in this regard. Mr. Finlayson forcefully observed that it was clear that, at the very least, there must always be a strong cautionary warning by the Trial Judge to the jury as to the dangers of the testimony of jailhouse informants. These excellent guidelines are attached as Appendix "F" to this Report.

To them, I would add the further restrictions outlined as follows.

RECOMMENDATIONS

1. **As a general rule, jailhouse informants should be prohibited from testifying.**

   They might be permitted to testify in a rare case, such as kidnapping, where they have, for example, learned of the whereabouts of the victim. In such a situation, the police procedure adopted should be along the following lines.

   Upon learning of the alleged confession made to a jailhouse informant, the police should interview him. The interview should be

videotaped or audiotaped from beginning to end. At the outset, the jailhouse informant should be advised of the consequences of untruthful statements and false testimony. The statement would then be taken with as much detail as can be ascertained.

Before it can even be considered, the statement must be reviewed to determine whether this information could have been garnered from media reports of the crime, or from evidence given at the preliminary hearing or from the trial if it is underway or has taken place.

If the police are satisfied that the information could not have been obtained in this way, consideration should then be given to these factors:

Has the purported statement by the accused to the informant:

- **a) revealed material that could only be known by one who committed the crime;**
- **b) disclosed evidence that is, in itself, detailed, significant and revealing as to the crime and the manner in which it was committed; and**
- **c) been confirmed by police investigation as correct and accurate.**

Even then, in those rare circumstances, such as a kidnapping case, the testimony of the jailhouse informant should only be admitted, provided that the other conditions suggested by Justice Kaufman in his Inquiry have been met. In particular, the Trial Judge will have to determine on a voir dire whether the evidence of the jailhouse informant is sufficiently credible to be admitted, based on the criteria suggested by Justice Kaufman.

2. **Further, because of the unfortunate cumulative effect of alleged confessions, only one jailhouse informant should be used.**

3. **In those rare cases where the testimony of a jailhouse informant is to be put forward, the jury should still be instructed in the clearest of terms as to the dangers of accepting this evidence. It may be advisable as well to point specifically to both the Morin case and the Sophonow case as demonstrating how convincing, yet how false, the evidence was of jailhouse informants.**

It is well to remember that in this case Terry Arnold, who was for a time suspected of the killing, volunteered to give evidence implicating Thomas Sophonow. Let us then consider a case where the real killer volunteers to give evidence implicating another. In those circumstances, the informant would have information that only the killer could possess. Thus, it would be easy to ascribe this knowledge to another with devastating

effect. At the same time, it would direct attention away from the true killer. There is then the danger that the jailhouse informant might be the culprit. It follows that, even if the proposed testimony meets all the conditions suggested in the Morin Inquiry Report and by me, the jury still must be given the same strong caution with regard to accepting this testimony. This very case might be used as an illustration in the instructions.

4. **There must be a very strong direction to the jury as to the unreliability of this type of evidence. In that direction, there should be a reference to the ease with which jailhouse informants can, on occasion, obtain access to information which would appear that only the accused could know. Because of the weight jurors attach to the confessions and statements allegedly made to these unreliable witnesses, the failure to give the warning should result in a mistrial.**

It may be that the best hope for curtailing the evil doings of jailhouse informants, lies in all the Provinces accepting the Manitoba Guidelines with the additional recommendations which I have suggested. It should become apparent to all that a good case for the Crown does not need to be supported by the treacherous testimony of jailhouse informants.

DISCLOSURES

It will be remembered that Thomas Sophonow's trials took place in 1982, 1983 and 1985, subsequent to the passage of the Canadian Charter of Rights and Liberties. It is clear that the decision in *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 radically altered the approach to disclosure. It was this decision which imposed a duty on the police and the Crown to make full and complete disclosure. Since that decision, the duty has been recognized and, for the most part, meticulously and scrupulously honoured.

Prior to *Stinchcombe*, the duty of disclosure was minimal, to say the least. The policy varied from province to province and from one Crown Counsel to another. Counsel acting for the Defence could expect very little. They would receive a brief summary of the case, the statements, if any, of the accused and forensic reports.

There does, however, appear to have been agreements among the Crowns testifying at the Inquiry that fairness required them to disclose further information in the circumstances of this case. For example, they agreed that material which had a significant bearing on the credibility of a witness would usually be disclosed. For the purposes of this Report, I will only consider those materials which Crown Counsel agreed ought to have been disclosed to Defence Counsel in 1982 or 1985.

Relevant and Significant Information about the Jailhouse Informants which Ought to have been Disclosed

The nature of the disclosures that ought to have been made has to some extent been explored in the chapters dealing with Jailhouse Informants and Eyewitness Identification. Yet the failure to make the required disclosures is important to this Inquiry. As a result, this issue must be reviewed again in this section. In some instances, a summary of the material which should have been disclosed will suffice.

Thomas Cheng

Sergeant Huff, the polygraph operator, stated in his report that the principal reason that Mr. Cheng gave for coming forward with the alleged confession of Thomas Sophonow was to get out of jail, to have charges against him withdrawn, to avoid deportation and to avoid disgracing his family. This report was in the Crown file. Mr. Dangerfield agreed that he would have read this report prior to Mr. Cheng's taking the stand. He also agreed that, in his taped conversation with Mr. Brodsky concerning Mr. Cheng, it appeared that he had been referring to some of the contents of this report. Further, he agreed that the underlining, which can be clearly seen in the report, would have been made by someone reading it and not by the police. Mr. Dangerfield very fairly agreed that the Defence should have had the report made available to it for cross-examining Mr. Cheng. However, he stated that he did not keep it from Mr. Brodsky deliberately. (Inquiry, Vol.

47, pages 8168, 8169). I accept that Mr. Dangerfield did not deliberately keep the report from Mr. Brodsky.

However, the fact remains that Mr. Brodsky did not have the report. Further, it would have been of great assistance in cross-examining Mr. Cheng. Its revelation would have obviously had a serious adverse effect upon Mr. Cheng's credibility and his standing with any jury. This is clear because, without it, he appeared to have testified for the highest of altruistic purposes and with no ulterior motive. This was false. It was or should have been known to the Crown that it was false. The information demonstrating that it was false should have been disclosed to the Defence. It was not. The Crown must be held responsible for this failure and its adverse effect on the trial of Thomas Sophonow.

Adrian McQuade

It will be recalled that there were two matters which were significant to Mr. McQuade's evidence. One was the taped interview of Mr. McQuade by Officers Daher and Smith. That interview established that Mr. McQuade was a regular police informant. Further, if he refused to testify, he would be declared a hostile witness and the interview read into the proceedings. This would have made life exceedingly dangerous and difficult for Mr. McQuade. Second was the report of Constable Luczenczyn made on March 27th, 1982. There, Mr. McQuade reported to Luczenczyn that, although he talked to Thomas Sophonow on that date, nothing was said by him about the murder. This report operates as a complete denial of everything that he said at the third trial. (Inquiry, Vol. 50, page 7709 and Inquiry, Exhibit 111).

These documents were in the Crown files. It will be remembered that Mr. Whitley knew of the surreptitious tape recording. Mr. Whitley agreed at the Inquiry that he knew Mr. McQuade feared for his life as a result of being labeled a "rat" and that Mr. McQuade had been forced to testify. (Inquiry, Vol. 50, pages 8766 and 8767).

With regard to the Luczenczyn report, Mr. Whitley agreed that it was fair to assume that it was part of the material that he would have looked at in assessing Mr. McQuade's credibility (Inquiry, Vol. 50, page 8770). Mr. Whitley also very fairly agreed that there was no doubt that Defence Counsel should have had the Luczenczyn report in order to cross-examine Mr. McQuade. He then went on to say: "I cannot say at the time if that happened," (Inquiry, Vol. 50, page 8772). Yet it was clear that Mr. McQuade was not cross-examined on the Luczenczyn report. It is obvious that he would certainly have been cross-examined on it if it had been disclosed to Defence Counsel. Its importance to Defence Counsel is crystal clear.

Mr. Whitley did admit that the Luczenczyn report should have been disclosed to Defence Counsel in 1985 because it "was such a... departure from what he had testified to... it would be unfair for this person to testify as if this didn't exist". (Inquiry, Vol. 50, page 8772). Mr. Brodsky testified that he had never seen the Luczenczyn report. When Mr. Whitley was asked why he did not disclose the report to Mr. Brodsky, he stated: "Well I don't know, I don't have an answer for that".

What is even more worrisome is that Mr. Brodsky was told by Mr. Whitley that Mr. McQuade's statement was being taken "as we speak". That was the statement of January 30th, 1985. Mr. Brodsky was not aware of either Mr. McQuade's interview by Officers Daher and Smith or of the Luczenczyn report. Mr. Whitley was aware of both that interview and the Luczenczyn report. He agreed that they should have been disclosed to Defence Counsel. They were not and the consequences of this failure must have been significant. The Crown is responsible for this serious omission.

Failure to Disclose Relevant Material Regarding John Doerksen

A police supplemental report specifically refers to John Doerksen's mistaken identity of Mr. Dubé as either the killer or the killer's twin brother. The police had very properly documented this information and it has been referred to in the segment dealing with eyewitness identification.

There is no evidence that either Mr. Dangerfield or Mr. Whitley were aware of this report. However, all Crown Counsel who testified at the Inquiry stated that, even by the standards of disclosure of 1982 and 1985, an incident of mistaken identity should have been disclosed to Defence Counsel. As Mr. Lawlor stated, this was because "it affected the credibility of one of our key witnesses" (Inquiry, Vol. 48, page 8319).

From Thomas Sophonow's point of view, it matters not whether the Crown Counsel were aware of this report. If they had it and did not read it, Crown Counsel were delinquent in their duty to prepare their case and to disclose that which ought to have been disclosed to the Defence. If the police did not deliver this report to the Crown, they were deficient in their duties. One way or another, the agents of the state, either the police or Crown Counsel, failed in their admitted duty to disclose this report to the Defence. In my view, there is no question that this information ought to have been disclosed by the police to the Crown. The Crown Counsel who testified at the Inquiry were unanimous in their view that it should have been disclosed to the Defence. The failure to disclose the incident unfairly and improperly strengthened the eyewitness testimony, particularly since the Crown considered Mr. Doerksen to be their key eyewitness.

There was as well agreement by all the Crown Counsel that the supplemental police report which noted that, even after seeing Thomas Sophonow in the Remand Centre and the Remand Court, Mr. Doerksen was only 90% sure of his identification ought to have been disclosed to the Defence. Neither Mr. Dangerfield nor Mr. Whitley remembers seeing this report. Mr. Lawlor testified that he would have read it since it was in the Crown file. Yet, he could not specifically remember doing so. He did agree that this information should have been disclosed to the Defence. (Inquiry, Vol. 48, page 8307). He agreed that the notes on a second copy of this report were written by him. When these notes were shown to him, he agreed that he knew of the report when he examined Mr. Doerksen at the preliminary inquiry. He also agreed that this very material should have been disclosed to Mr. Pollack, the Defence Counsel.

I should make it clear that I am sure that Mr. Lawlor is now a very able, conscientious and ethical Crown. He has at this Inquiry demonstrated time and again his integrity. Yet I must note that, in 1982, Mr. Lawlor was aware of this report when he led evidence given at the preliminary by Mr. Doerksen to the effect that he was certain that Thomas Sophonow was the man he saw at the Ideal Donut Shop and the man he fought with on the Norwood Bridge. This police supplemental report should have been disclosed to the Defence. It would have been important information for Defence Counsel's cross-examination, which would undoubtedly have had a significant adverse effect on Mr. Doerksen's credibility. The disclosure of all the police reports which it was agreed should have been disclosed would undoubtedly have had a cumulative adverse effect on the testimony of the Crown's key eyewitness.

The Crown and the police are responsible for the failure to disclose this important information. It was conceded by the Crown that it should have been disclosed yet it was not. This was a serious error and the Crown and police must bear the responsibility for it.

Statements of Eyewitnesses Made Under Hypnosis

Mr. Myshkowsky wrote in a memo that he believed that the hypnosis of witnesses created a potential problem and that he also believed it appropriate that the Defence be given notice of it. (Inquiry, Exhibit 91). It is significant that the supplemental reports dealing with hypnosis (Inquiry, Exhibit 148 – Police Supplemental Report, Vol. 16A, pages 660 – 662 and pages 735, 736) were located in the Crown file. Thus, there can be no question that the Crown was in possession of these materials. With regard to disclosure, Mr. Lawlor was unable to say what had been disclosed to the Defence regarding hypnosis. Mr. Whitley did not know whether Mr. Brodsky, Defence Counsel, had the material relating to the hypnosis. (Inquiry, Vol. 50, pages 8807). Although Mr. Myshkowsky believed that it was appropriate that the Defence be given notice of these materials, it is clear that it was not disclosed to the Defence, yet it should have been. It would have been very useful in the cross-examination of some of the eyewitnesses including Mr. Doerksen. It is the Crown which must bear the responsibility for this error.

Melvin Williamson's Comments to Mr. Lawlor

This has been dealt with in the segment dealing with the twine. It will be remembered that Mr. Williamson met with Mr. Lawlor the night before he testified in the first trial of Thomas Sophonow. He disclosed to Mr. Lawlor that the twine was not unique to the West Coast and that an approved manufacturer of the twine was located in Portage la Prairie. Mr. Lawlor very fairly agreed that in 1982 Defence Counsel should have been advised of Mr. Williamson's comments. Indeed, he went further and said that his ethical position as a Crown Counsel was such that he was expected to disclose the information to Defence Counsel. (Inquiry, Vol. 48, pages 8401-8403).

Mr. Lawlor suggested that he passed the information on to Mr. Dangerfield who was acting as Senior Counsel in the case. Mr. Dangerfield denied any knowledge of Mr.

Williamson's comments. However, Mr. Dangerfield also testified that the Defence should have been told about them and stated that, if he had been aware of the comments, he would have advised the Defence of them.

Mr. Whitley testified that he knew nothing of Mr. Lawlor's discussions with Mr. Williamson. He suggested that he would neither have expected nor asked Mr. Brodsky to agree to have the twine evidence read in if he had know that the twine might have been from somewhere else other than British Columbia. It cannot be forgotten that the twine was relied upon "as a compelling piece of evidence linking Thomas Sophonow to the killing". (Inquiry, Vol. 49, page 8570).

All Crown Counsel who testified agreed that this evidence should have been disclosed to Defence Counsel. This failure not only resulted in the inability of Defence Counsel to cross-examine on this issue but it resulted in the jury being misled as to the significance and strength of the twine evidence. Once again, it is the Crown that must bear the responsibility for this serious error.

The Red Mesh Christmas Stockings

It will be remembered that Thomas Sophonow gave a statement in May 1982 at his preliminary hearing. He told of the repair of his car at Canadian Tire. As a result of his statement, Sergeant Biener attended at Canadian Tire and subsequently at Safeway where the stockings were purchased and spoke to Susan O'Rourke. He then took possession of a stocking at St. Boniface Hospital. All this was disclosed not only in police supplemental reports but in discussions with Mr. Myshkowsky and also, Sergeant Biener believed, with Mr. Lawlor.

Sergeant Biener testified that, following Thomas Sophonow's testimony at the first trial pertaining to his alibi, there was a meeting on November 2nd, 1982, involving Mr. Dangerfield and Mr. Lawlor and several investigating officers. At that time, he stated that he produced the Christmas stocking and it was taken by other officers who were interviewing persons at various hospitals.

Mr. Dangerfield testified that he certainly remembered the November 2nd meeting but that he had no memory of either seeing or discussing the stocking. (Inquiry, Vol. 47, pages 7997 – 7999). I can quite understand that, after the passage of so many years, he would not recall that incident. He advised Mr. Wolson, Commission Counsel, that, if he had known about the stocking seized at St. Boniface, he would not necessarily have told the Defence about it. However, under cross-examination by counsel for Thomas Sophonow, he agreed that any prosecutor having knowledge of the stocking should have advised the Defence about it. (Inquiry, Vol. 47, page 8179). Mr. Whitley had no recollection of a Christmas stocking, who seized it or what was done with it. He could not recall any discussions with Sergeant Biener about a Christmas stocking and stated that he had not seen it. He did concede that knowledge of the Christmas stocking would have been very useful to Defence Counsel.

There are worrisome aspects of the evidence pertaining to the Christmas stocking. For example, it is apparent that Mr. Dangerfield knew of the stocking when he cross-examined Nurse Abrey. He agreed that the information which he possessed should have been disclosed to the Defence. Yet, for some inexplicable reason, the Defence was not advised of the stocking's existence or given an opportunity to examine it and subsequently cross-examine witnesses with regard to it. Again, the Crown is responsible for this unfortunate error.

The Second Photo Line-up

Mr. Lawlor did not remember that there was a second photo line-up or why he requested it. However, he later remembered why he requested a second photo line-up and agreed that he would have read the supplemental report dealing with it. He very fairly conceded that the contents of that supplemental report should have been made known to the Defence.

Mr. Dangerfield could not recall that a second photo line-up was produced (Inquiry, Vol. 48, page 8207).

Similarly, Mr. Whitley knew nothing of the second photo line-up. He said that he was surprised to hear that it had been prepared by the police. He agreed that it would have been important to the Defence. He said that he did not know if it had been disclosed to Mr. Brodsky but, if it was not, it certainly should have been (Inquiry, Vol. 50, pages 8814, 8815). It is significant that the supplemental report (Exhibit 149 – Police Supplemental Report, Vol. 16B, page 8046), which dealt with the second photo line-up and the witnesses who viewed it, was located within the Crown file. It indicates that Mr. Lawlor specifically advised Sergeant Wawryk that he should prepare a gallery pack, which would include the accused, to be shown to prospective witnesses. Thus, there is no doubt that Mr. Lawlor knew of the second photo pack line-up. Although neither Mr. Dangerfield nor Mr. Whitley recall anything about the second photo pack line-up, Mr. Lawlor did know about it.

It should have been disclosed to the Defence. This was particularly important in connection with the third trial. Two of the witnesses called by the Crown at that trial had viewed the second photo pack line-up. The first was Marian McLean. She did not recognize anyone in the photo pack. Further, Mr. Whitley had told Mr. Brodsky that she had not made a statement. Yet her statement is found in the police and Crown files (Inquiry, Exhibit 150, Vol. 17A, page 1015).

The second witness was Paul Collette who was the sole rebuttal witness at the third trial. Mr. Whitley examined Mr. Collette who stated that he had observed a man with a cowboy hat in McDonald's on two occasions on the evening of December 13th, 1981. On both those occasions, he was sitting in a seat which afforded him a view of the donut shop. (Inquiry, Exhibit 5 – 1985 Trial Transcripts, page 4480 – 4484).

The evidence of Mr. Collette was of significant prominence in the directions to the jury given by Chief Justice Hewak. He stated:

> "You may wish to consider whether this man could have been the accused, could have been the man responsible for the killing keeping in mind the event that happened at the donut shop at 8:30 – 8:45. Is it a reasonable conclusion that it was the killer?" (Inquiry, Exhibit 5 – 1985 Trial Transcripts, page 4678).

Obviously, this evidence was thought to be significant and important by the Crown and by the Trial Judge. It would have been equally important for the Defence to demonstrate that, when viewing the second photo pack line-up which included a picture of Thomas Sophonow, Mr. Collette stated that the male he saw was not in the photo pack. This would have nullified the rebuttal evidence. Yet again, the Crown, particularly Mr. Dangerfield, Mr. Lawlor and Mr. Whitley, all must bear the responsibility for failing to disclose this information to the Defence. It was important yet it was withheld. This failure to disclose what admittedly should have been disclosed constituted a serious error which must have had unfortunate consequences for Thomas Sophonow.

The McDonald's Witnesses

The McDonald's witnesses were called at the third trial. In January of 1985, prior to the commencement of the third trial, Mr. Whitley advised Mr. Brodsky in writing that there were no statements from these witnesses. (Inquiry, Exhibit 105). There is a police supplemental report that deals with what Mr. Shapiro reported to the police. A reading of Mr. Shapiro's evidence from the third trial indicates that Mr. Brodsky did not have Mr. Shapiro's reported statement to the police and that Mr. Whitley did have that statement and used it to impeach Mr. Shapiro's evidence. It is unduly technical and unworthy of the Crown to argue that this was not a statement. This material should have been disclosed to the Defence. It was the responsibility of the Crown to disclose it and they failed to do so.

There was also a statement of another McDonald's witness, Paul Collette, in the police files which was not provided to the Defence and ought to have been.

Esther Navoa

It will be recalled that Esther Navoa made a further statement on February 20th, 1985. At that time, she stated that she recalled asking for and receiving a stocking for her son from a man who was undoubtedly Thomas Sophonow. Mr. Whitley advised the Inquiry that he told the Defence of Esther Navoa's new statement. He said that Mr. Brodsky had intended to call Ms Navoa himself because her evidence was so supportive of Thomas Sophonow. (Inquiry, Vol. 50, page 8808). On the other hand, Mr. Brodsky denied that he had been informed about the change in Esther Navoa's evidence. He stated that, if he

had known, he would have called her as a witness. Her new evidence was of particular importance to him. Not only was her evidence helpful to Thomas Sophonow, it may have survived the ruling of the Trial Judge pertaining to alibi evidence. As well, it would have helped to convince Thomas Sophonow to take the witness stand and testify in his own defence at the third trial, as he did at the first and second trials.

I accept the evidence of Mr. Brodsky that he was not advised of the change in Nurse Navoa's statement. His memos demonstrate that he was relentless and thorough in his preparation and there is no reference to the changes in her statement in his detailed memos. There is no reason why he would not have called Esther Navoa in light of her new statement. I do not think there is anything sinister in Mr. Whitley's statement. He probably has simply forgotten what transpired with regard to Esther Navoa. Once again, her statement should have been disclosed by the Crown and it was not. This is another error for which the Crown is responsible.

The Peasgood Statement

Mrs. Peasgood gave a statement that she arrived home from the Canadian Tire garage about 8:30 p.m. Ordinarily, it would only take her some 10 minutes from the Canadian Tire garage to her home. Mr. Dangerfield was aware of her statement and he agreed that he looked at it. (Inquiry, Vol. 47, pages 8212, 8213). He agreed that the statement should have been in the possession of Defence Counsel. He recognized its significance because, if Mrs. Peasgood arrived home at 8:30, Thomas Sophonow could not have been the killer.

Mr. Dangerfield stated that he had not disclosed the evidence of Mrs. Peasgood because she was a rebuttal witness.

By the third trial, Mr. Brodsky still did not have Mrs. Peasgood's statement. Mr. Whitley agreed that the statement standing alone was capable of putting Thomas Sophonow at a completely different location at the time of the murder. He agreed that Mrs. Peasgood's statement supported Thomas Sophonow's alibi, and that he should have ensured that Mr. Brodsky had the statement. However, he could not recall why it was not given to him.

Sergeant Biener had recognized the importance of Mrs. Peasgood's statement and recorded it on May 29th, 1982. Both his supplemental report and the statement were located in the Crown file.

It is true that Mrs. Peasgood later corrected the time set out in her statement. It is also true that the evidence of the alibi witnesses places Thomas Sophonow at the hospital at 8:30 p.m. Nonetheless, this was evidence that should have been available for the cross-examination of Mrs. Peasgood and her brother. Indeed, it was conceded that it ought to have been in the hands of the Defence. No reason was put forward as to why it was not.

In summary, it is clear that there was a great deal of very significant material that Crown Counsel agreed should have been disclosed to Defence Counsel. It was not. There can be no doubt that, if this material had been disclosed, it may have had a significant effect on the trial process. Crown Counsel must bear the responsibility for these omissions.

Present Situation

Fortunately, the commendable actions of the Winnipeg Police Service establishing new procedures and the decision of the Supreme Court of Canada in *R. v. Stinchcombe*, requiring the Crown to make complete disclosure to the Defence, have combined to ensure that there should not be a recurrence of the many serious omissions which occurred in the Thomas Sophonow case.

The Winnipeg Police now make supplemental reports on everything pertinent to the case. The reports are made chronologically and numbered sequentially and delivered to the office of Crown Counsel. There can no longer be problems of missing reports or deleted reports or portions of reports being deleted before they are delivered to Crown Counsel.

Further, the decision in *Stinchcombe* requires the Crown to disclose all relevant material to Defence Counsel. If the new police procedures and the *Stinchcombe* requirements are followed, there should never again be a repetition of the numerous and serious failures to disclose which occurred in the Thomas Sophonow case. The damage to Thomas Sophonow's case occasioned by these failures is irreparable.

THE ROLE OF THE TRIAL JUDGE

Judges, as a result of their office, have an extremely important role to play in Canadian society. Of all judicial offices, that of the Trial Judge is the most important. It is the Trial Judge who exercises a broad discretion in determining the admissibility of much of the evidence and thus the composition of the trial record. It is the Trial Judge who must make findings of fact which will follow the case through all levels of appeal. Most importantly, it is the Trial Judge who represents justice in the community. That should be demonstrated by a fair and balanced approach to every issue which arises in the case, to all parties, and to the case as a whole.

The Trial Judge must be patient with emotional and excited witnesses, with occasionally obdurate counsel and, from time to time, forgetful court attendants. All in the Court room, including the most difficult witness, must be treated with respect and courtesy.

The Trial Judge must have the courage to make decisions in accordance with the law even though the result may be unpopular in the community and the Judge subjected to cruel and unthinking criticism.

Most of all, the Trial Judge must act fairly with regard to witnesses, counsel and the case itself. It is all too easy to act in a God-like manner and dispense justice in a way that he or she deems appropriate and to forget to preside in an even-handed manner, giving equal time and attention to both sides.

A Trial Judge must display unremitting patience, consummate courtesy, diligence in research and preparation, complete integrity, great courage and a passionate sense of fairness.

Truly, the role of the Trial Judge is the most difficult and demanding judicial office. So very much is expected of Trial Judges and those great expectations are so often fulfilled.

Trial Judges are human and, like all of us, subject to error. Their errors cannot be hidden because their work is performed in public, in the glare of the media spotlight.

When Trial Judges, Crown Counsel and Defence Counsel all fulfil their difficult roles, our system of criminal justice works extremely well. Fortunately, this is true in the vast majority of cases.

It is against this background of understanding and appreciation of the role of the Trial Judges that I approach the brief consideration of the work of the Trial Judges presiding in the second and third Thomas Sophonow trials.

Conduct of the Trial

It is not necessary for me to comment upon the conduct of the trials by the presiding Trial Judges. That has been ably done by the Manitoba Court of Appeal. Suffice to say that I agree with the comments and conclusions of the majority of the Manitoba Court of Appeal in directing a new trial following the second trial and directing an acquittal after the third trial. As well, I agree with and endorse their findings pertaining to the conduct of those trials.

All who are concerned with the administration of justice can be grateful to the Manitoba Court of Appeal. That Court rightly found that neither in his second nor in his third trial did Thomas Sophonow receive a fair trial. The Court of Appeal, by a majority in the first and unanimously in the second appeal, recognized that he had been denied that most basic right, the right to receive a fair trial. The role of Trial Judges is difficult and it is all too easy for them to be led into error and to make mistakes. The Court of Appeal fulfilled its function of correcting the serious errors made. We are all the fortunate beneficiaries of its perceptiveness and courage.

COMPENSATION

Manner of Assessing Compensation for Wrongful Conviction

How should the issue of compensation for wrongful conviction for murder be approached?

Should there be a cap placed on these damages as a result of the 1986 Manitoba Guidelines? If the Guidelines are not used for the imposition of a cap, should the damages be limited to those which are permitted in the trilogy of damage cases decided by the Supreme Court of Canada?

What aspects of wrongful conviction and imprisonment should be taken into account in assessing the damages and what principles should be applied in considering the amount of compensation that should be paid in case of wrongful conviction and imprisonment? How should the principles be applied to Thomas Sophonow?

To what extent should Thomas Sophonow's actions be taken into consideration in the final assessment?

Should there be an award for aggravated damages for any of the actions of the police or Crown Counsel involved in the case?

These are questions that must be kept in mind and resolved in order to determine whether compensation should be awarded and, if it is, in what amount.

In considering the issues in this case I have had the very great benefit of the learned and helpful paper prepared by Professor Sheilah Martin Q.C. as well as her testimony at the Inquiry.

I have as well had the assistance of excellent submissions from all counsel pertaining to the questions that this case raises.

At the outset, I must concede that portions of the section dealing with compensation will appear to be repetitious. I apologize for this. It was necessary to permit this segment to be read separately from that dealing with the investigation. This is done for the benefit of those who may only be interested in the compensation issue.

Entitlement to Compensation

Thomas Sophonow has been deprived of his liberty; he has suffered irreparable damage to his reputation by being branded as a murderer; and he has suffered and will continue to

suffer from the symptoms flowing from a post-traumatic stress disorder. In my opinion, there can be no doubt of his entitlement to compensation.

In his very able submission on behalf of the Province of Manitoba, Mr. Olson contended that there must be a cap placed on the damages for wrongful conviction and that Thomas Sophonow must assume a very significant portion of the blame for that conviction.

The extent of Thomas Sophonow's responsibility raises such significant issues, which would so limit and curtail any award, that they should be considered first.

To What Extent Should Thomas Sophonow's Conduct be Found as a Significant Cause of his Problems?

It was correctly pointed out that Thomas Sophonow, in his evidence, very frankly admitted that he must share some responsibility for his wrongful conviction. He described himself, at the time of the investigation in 1983, as being "an egotistical young punk". It was noted and emphasized that Thomas Sophonow was untruthful in his statements to Officers Barnard, Wawryk and Paulishyn. He was forced to admit to these lies when he testified at his trials. It was submitted that this undoubtedly damaged his credibility and increased the likelihood of his conviction.

The falsehoods include the following:

a. he did not, as he stated, "crash" on the night of December 23rd;
b. he did not leave Winnipeg on December 24th but on the 23rd;
c. he was not wearing jeans;
d. he had, in fact, been to the Domo Shopping Centre on the day of the murder;
e. his route out of town on the night of the 23rd was not one that would have bypassed Winnipeg;
f. contrary to his statement, he was familiar with St. Boniface as he had lived there;
g. he did make phone calls while he was in Winnipeg; and
h. his car did not break down only in Medicine Hat on the trip back to Vancouver.

These falsehoods undoubtedly affected the way that the police and the jury regarded Thomas Sophonow and his testimony.

Further, it is argued that, if Thomas Sophonow had fully disclosed his alibi evidence, the case might never have come to trial.

It is, indeed, unfortunate that Thomas Sophonow did not disclose his actions on the 23rd to Detective Barnard. Both Thomas Sophonow and Detective Barnard thought that the interview was casual in nature and Thomas Sophonow quite rightly had no complaints

about the manner in which that interview was conducted. In these circumstances, it would have been so easy to advise Detective Barnard of the repairs to his vehicle at Canadian Tire, the purchase of stockings at Safeway and the attendance at the hospitals. This might to some extent have alleviated any continuing suspicions that he was the murderer. Nonetheless, it cannot be forgotten that he could not have been aware of the need to put forward his alibi. Certainly, there was no obligation to disclose it at this time.

However, for the reasons that I have given earlier and which I will summarize later in this section, I can give very little weight or credence to any of the statements made by Thomas Sophonow during the interview conducted by Sergeants Wawryk and Paulishyn. It is sufficient to observe that, when the entire interview is considered in the context of the investigation, its unfairness is apparent. I doubt if, today, any of it would be considered admissible.

His mistrust of lawyers and the legal system contributed to this tragedy. He unfortunately failed to advise Mr. Pollack or the Court at his first trial that, when he attended the Victoria Hospital, he went up to the second floor where he encountered Joan Barrett who directed him to other hospitals. This created a great deal of scepticism and suspicion when Joan Barrett did come forward with regard to both her evidence and that of Thomas Sophonow. This may have been an understandable error resulting from an inability to recall a detail of his attendance at Victoria Hospital. Nonetheless, it led to unfortunate consequences.

Further, Thomas Sophonow was argumentative at times, particularly in response to questions posed by Crown Counsel. As a result, he appeared in very bad light when he was cross-examined in the first and second trials. This was unnecessary. Simple, direct answers to the questions without very involved explanations would have been helpful to his position.

Lastly, he failed to cooperate with his counsel. His tendency to change lawyers was unfortunate. So too was his refusal to take their advice. On one occasion, he preferred the advice of a fellow prisoner to that of his counsel. As well, his failure to testify at the third trial created unnecessary difficulties for Mr. Brodsky and led to the questioning by the Trial Judge of the admission of the alibi evidence.

Thomas Sophonow frankly agreed that he was in part to blame for the wrongful conviction. However, the errors of Thomas Sophonow are very small in comparison to those committed by the State, either in the form of the police investigation or the acts and omissions of Crown Counsel in the prosecution of this case, all of which I have reviewed. If these points were being assessed in a negligence case, Thomas Sophonow would be required to bear some 10% of the responsibility, whereas the State would be assessed at 90%. I hasten to add that this would not be compatible with an innocence-based approach, which I consider to be appropriate to this case. However, it must be taken into account in the assessment of the compensation that should be paid to Thomas Sophonow.

Conduct of the Investigation

It will be remembered that Sergeants Wawryk and Paulishyn put together a photo line-up of Polaroid snapshots to show to Mr. and Mrs. Janower. There is no doubt that the photo of Thomas Sophonow stands out in this group. It is very different from any of the others. Further, the officers themselves agreed that it was not a good photo pack for several reasons. They acknowledged that it lacked the usual number of 10 photos and that they could have used a better pack, perhaps even the second photo pack that they made up, which was shown to some witnesses, including Mr. Doerksen. It included the police photo of Thomas Sophonow taken five years earlier. That photo had been confirmed by his brother and sister-in-law as being a good likeness of Thomas Sophonow in 1981. It is significant that none of the witnesses who were shown that second photo pack identified Thomas Sophonow as the person whom they had seen the night of the murder.

The officers said that the first photo pack identification with Mr. and Mrs. Janower was undertaken to strengthen their position before they went to Vancouver to interview Thomas Sophonow. Yet it was known to the officers that the photo pack itself was unsatisfactory. The officers conceded that, if they had taken more time, they could have prepared a better photo pack. Despite this, they proceeded with the identification interviews with Mr. and Mrs. Janower and obtained what really amounted to only a very tentative identification. Indeed, if a proper photo pack had been presented, there may not even have been such a tentative identification of Thomas Sophonow and his investigation might have been brought to an end right then.

Quite apart from the problems arising from the photo pack identification, very serious questions arise from the manner in which the interrogation of Thomas Sophonow was conducted by Sergeants Wawryk and Paulishyn. This has been reviewed in the investigation stage so that a brief summary will suffice. I am satisfied that the transcript which the officers made of the interrogation is far from being verbatim. More importantly, it was never presented to Thomas Sophonow for his review and comments with regard to errors, omissions or additions which could and should have been inserted. It is significant that Detective Barnard took care to present the statement that he took to Thomas Sophonow to review and sign it. This was the well known and appropriate practice. A strip search and a body cavity search for drugs in the midst of the interview was demeaning, degrading and humiliating. It was unnecessary and undertaken, in my view, solely for the purpose of humiliating Thomas Sophonow.

Further, I am satisfied that it was the officers who suggested to Thomas Sophonow, by their gestures, the manner in which the door was locked at the Ideal Donut Shop. No other logical conclusion can be reached. Detective Barnard, whose evidence I accept without reservation, was not aware of how the door was locked or, indeed, of many of the circumstances surrounding the crime. Thomas Sophonow is innocent of the crime, he was not at the Ideal Donut Shop and he could not have known how the door was locked. He could not have learned about it prior to his interview with Sergeants Wawryk and Paulishyn. He left Winnipeg the night of the 23rd of December and had not returned before the interview. The suggestion can only have come from the officers. Yet Thomas Sophonow's demonstration of the locking of the door was, according to Mr. Dangerfield,

the most damaging evidence against him in the case. He agreed that the weight of that evidence, or the effect of that evidence, would have been greatly reduced if the jury had been aware that it came from a suggestion by the police. Indeed, I would go further. In my opinion, it would have had no weight whatsoever.

I am satisfied that there are omissions in the statement taken by Sergeants Wawryk and Paulishyn and this suggested demonstration is the most serious of those omissions. The omissions in the interrogation of Thomas Sophonow and the presentation of the flawed photo pack were either deliberate or grave acts of careless inadvertence.

In addition, the police officers agreed that they were playing "mind games" with Thomas Sophonow and that they too told untruths and part truths in an unsuccessful attempt to obtain a confession. It is noteworthy that their interrogation was so intense and compelling that Thomas Sophonow came to believe that he had committed the murder.

It may very well be that, if these deliberate actions of the police had not been taken, there would have been no case to put forward against Thomas Sophonow. Thus, from the very outset, by far the greatest responsibility for this tragic miscarriage of justice must fall upon the investigating officers. There are other problems in connection with the investigation and later in the prosecution, which I will refer to in due course, that also amount either to deliberate wrongful acts or grave acts of careless inadvertence.

There can be no doubt of the devastating and traumatic effect that the first interview by Sergeants Paulishyn and Wawryk had upon Thomas Sophonow. No actor, however skilful and experienced, could have portrayed Thomas Sophonow's tortured reaction to his recollection of it. He was clearly deeply disturbed by it. I have no doubt that he was completely traumatized by that interview and that the memory of it has haunted him from that day to this.

Non-Disclosure

There are many instances of non-disclosure. They have been referred to earlier and they all refer to disclosure which Crown Counsel agreed would or should have been made in 1982. It was significant and important information that most certainly should have been disclosed. From Thomas Sophonow's point of view it matters not whether the fault for the failure to disclose lies with the police or Crown Counsel.

In either case, it was agents of the State who were responsible for withholding the information. If the supplemental reports were, indeed, all provided by the police to the Crown then the Crown ought to have reviewed them in the course of preparation. If they received the police reports, then they had an acknowledged duty to disclose many of them. If they were not given to the Crown but were deleted because, in the belief of high ranking police officers, they were not relevant to the case, then that was an error on the part of the police. No matter who is responsible for it, the failure to disclose demonstrates either deliberate or serious, inadvertent acts on the part of the police or Crown Counsel. This was important material and its disclosure would undoubtedly have had a significant effect on the course of the trial.

For example, with regard to the eyewitness identification, it has been seen that disclosures ought to have been made pertaining to Mr. Doerksen. He was, after all, the prime eyewitness for purposes of identification. His identification of Mr. Dubé and then the Sun Reporter as the killer and the fact that, even after viewing Thomas Sophonow in the Remand Centre on at least two occasions, he was still only 90% sure of his identification are all matters which Crown Counsel agreed should have been disclosed to Defence Counsel and were not.

The earlier statement of Mr. McQuade that, in March of 1982, while he was in the Remand Centre he did not discuss the murder with Thomas Sophonow would have been of fundamental importance in his cross-examination. So too would the statement given by Mr. Cheng to Sergeant Huff, the polygraph operator, as to his primary motive for coming forward to testify as to Thomas Sophonow's alleged confession have had great significance. The statement of Mrs. Peasgood, that it took her 10 minutes to reach her home from the Canadian Tire garage and she arrived home at 8:30 p.m., would have been important. That this evidence as to time might conflict, to some extent, with the alibi evidence is of no consequence. This is evidence which should have been available for cross-examination of Mrs. Peasgood. There was as well the failure to disclose, prior to the third trial, the latest statement of Nurse Navoa. In this statement, she revealed her recollection that she did ask a man, who was undoubtedly Thomas Sophonow, for a Christmas stocking for her son Philip.

The correspondence pertaining to the ability to test the twine to positively identify the manufacturer should, of course, have been disclosed. So too should the position of Mr. Williamson, that there was a supplier of the twine located in Portage La Prairie, have been disclosed. The failure to disclose this undoubtedly led to the agreement by the Defence as to the source of the twine and the Crown's substantial reliance on this aspect of the evidence in its submissions. The failure to disclose evidence pertaining to the twine is of particular significance since it must have been either a deliberate omission or, at the very least, a very serious, inadvertent omission.

Lastly, there is the allegation of sexual assault. There is no doubt that the investigating officers suspected that the motive for the assault was sexual in nature. However, as the Trial Judge found and the Court of Appeal emphasized, there was no evidence to support that position. As Mr. Justice Twaddle stated in his reasons: "there was not a particle of evidence to substantiate that there was a sexual assault". Nonetheless, the sexual assault was put forward to the jury and trumpeted in the media.

All the unfortunate errors of the police investigation and the Crown prosecution have been reviewed in the section of the Report dealing with the Investigation. They are repeated simply to demonstrate that the misstatements, untruths and shortcomings of Thomas Sophonow pale in comparison to the errors and omissions of the police and Crown Counsel.

As I have said, if this were a negligence action, Thomas Sophonow would be responsible for no more than 10% of the liability for the ensuing damages while the State, as the

entity responsible for the acts of either the Crown Counsel or the police investigation, would be responsible for 90% of the liability for the damages.

In an innocence-based assessment, it is neither necessary nor appropriate to consider fault, or degrees of fault, in terms of entitlement. However, in my opinion, fault is a factor that should be taken into account in determining the quantum of the compensation. It is now appropriate to move on and consider various methods that might be considered as a basis for awarding compensation.

On What Basis Should Compensation be Considered?

Compensation may be considered either as fault based, or as an ex gratia payment or as innocence based.

Fault-based tort actions

The law of tort has been used by common law courts for hundreds of years as a means of providing compensation to those injured by careless acts. Tort law is generally based on negligence. Negligence can be roughly defined as the doing of an act, or the failure to do an act, which it was reasonably foreseeable would result in harm. The primary goal of tort law is to compensate the injured party and, secondly, to act as a deterrent to misconduct.

Can wrongful conviction and imprisonment come within the torts known as false imprisonment and malicious prosecution? In my opinion, it cannot.

False imprisonment

False imprisonment cannot be applicable to a situation such as that faced by Thomas Sophonow since, by definition, it must arise from the infliction of bodily restraint which is not expressly or impliedly authorized by law. The false aspect of the imprisonment recognizes and is based upon an unauthorized detention. Thus, this tort is almost always applied to individuals or corporate entities who have physically restrained the injured party. On the other hand, if the State bodily restrains a person, it is almost invariably done pursuant to a statutory or regulatory authority. Thus, it is not a "false" imprisonment and the tort would rarely apply to State actions.

Malicious prosecution

In order to succeed in an action of malicious prosecution, the plaintiff must establish that proceedings have been initiated by the defendant (prosecutor) and have terminated in favour of the plaintiff. Further, there must be an absence of reasonable and probable cause for the defendant to have instituted the action. Lastly, there must have been malice or a purpose other than that of carrying the law into effect.

It was observed in *Nelles v. Ontario,* [1989] 2 S.C.R., 170 that the last two elements of this tort, namely, the absence of reasonable and probable cause for the institution of the prosecution and the existence of malice, are the most difficult to prove.

Reasonable and probable cause requires an actual subjective belief by the defendant, which is objectively reasonable in the circumstances, based on facts known to the defendant when the charge was laid. To show malice, a plaintiff must demonstrate an improper purpose or the deliberate improper use of the office of Attorney General or the Crown Attorney. The term malice includes spite, ill will, vengeance or the gaining of a private or collateral advantage.

It is sufficient to note that potential claimants in an action for malicious prosecution would be unlikely to succeed in demonstrating a lack of reasonable and probable grounds and malice against the police or prosecutors. Such an action could only succeed in exceptional circumstances where malicious or unlawful conduct has been established. Professor Kaiser strongly contends in his writing that the law of torts has not developed an effective recovery mechanism for the wrongfully convicted. (A. Kaiser, Wrongful Conviction and Imprisonment Towards an End to the Compensatory Obstacle Course (1989), 9 Windsor Y.B. Access Justice 96 at 112). I agree with him.

Damages for Charter breaches

It may be that in the future actions for damages arising out of Charter breaches may give rise to a remedy in tort. However, it was very properly pointed out by Marilyn Pilkington (Damages as a Remedy for Infringement of the Canadian Charter of Rights and Freedoms (1984), 62 Canadian Bar Review 517 at 535) that Charter remedies require a very careful balancing of a number of principles, including the vindication of guaranteed rights, prevention, deterrence, compensation and punishment.

For his part, Professor Cooper-Stephenson indicates that claims for Charter damages involve three stages.

1. Has there been a prima facie breach of a substantive right or freedom according to general constitutional law?
2. Can the prima facie infringement or denial be brought within the terms of Section 1? It is his position that whether the limit is reasonably justified in a free and democratic society is usually a matter of general constitutional law.
3. If there is an unjustified infringement, are damages an appropriate remedy under Section 24(1) of the Charter of Rights as a matter of constitutional remedial law?

It is the view of Professor Cooper-Stephenson that the primary focus of Charter damages should be compensation and that the compensation should be more complete than that provided in the ordinary law.

It is apparent that, in order to claim Charter damages, the plaintiff must establish that the State committed an unjustifiable breach of one of the accused's Charter rights. It is still too early to determine the extent to which the Charter may be utilized in claims for damages and whether it is the appropriate basis for claims based upon wrongful conviction and imprisonment.

In summary, it can be seen that there are great many difficulties besetting an accused who seeks a tort-based remedy for wrongful conviction and imprisonment.

Entitlement principles based on factual innocence

In the factual innocence model, the focus is not on attaching blame to individuals involved in the criminal justice process; rather, it acknowledges that compensable harms can result from the conviction and imprisonment of the factually innocent. Although the threshold requirements and the degree of compensation may vary in different jurisdictions, it is apparent that this system is in use around the world.

1. The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocol were ratified by Canada and came into force on May 19th, 1976 (Exhibit 28). Two articles of the ICCPR are relevant to this Inquiry:

Article 9 (5) provides that anyone who has been a victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 14 (6) provides that, where a person has by a final decision been convicted of a criminal offence and subsequently his conviction has been reversed or he has been pardoned on the grounds that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of that conviction shall be compensated according to law unless it is proved that the non-disclosure of the unknown fact was wholly or partly attributable to him.

It is not clear whether Article 14 (6) applies to someone in prison but acquitted on appeal. However, it is not necessary to consider this question because the Order in Council which binds me specifically provides that Thomas Sophonow is innocent.

2. Canada's 1988 Federal-Provincial Guidelines on Compensation for Wrongfully Convicted and Imprisoned Persons

In 1985, a task force was established to inquire into compensation for wrongful convictions. A report was issued which examined redress mechanisms in force in Scandinavia, Holland, France, America and Japan.

In March 1988, at a meeting in Saskatoon, federal and provincial justice ministers agreed to a joint set of guidelines relating to compensation for persons wrongfully convicted and

imprisoned across Canada. The task force report served as a background paper but was not followed in all respects either federally or provincially.

The Federal-Provincial Guidelines addressed the issues of:

- the rationale for compensation;
- the conditions of eligibility for compensation; and
- the criteria for quantum of compensation.

The Federal-Provincial Guidelines provide the following rationale for compensation. They observe that, despite the many safeguards in Canada's criminal justice system, innocent persons are occasionally convicted and imprisoned. Recently, three cases '*Marshall, Truscott* and *Fox*' focussed public attention on the issue of compensation for those persons who have been wrongfully convicted and imprisoned. In appropriate cases, compensation should be awarded in an effort to relieve the consequences of wrongful conviction and imprisonment.

The Guidelines suggest that the following are prerequisites for eligibility for compensation:

1. the wrongful conviction must have resulted in imprisonment, all or part of which has been served;
2. compensation should only be available to the actual person who has been wrongfully convicted and imprisoned;
3. compensation should only be available to an individual who has been wrongfully convicted and imprisoned as a result of a *Criminal Code* or other federal penal offence;
4. as a condition precedent to compensation, there must be a free pardon granted under Section 683(2) [now 749(2)] of the *Criminal Code* or a verdict of acquittal entered by an Appellate Court pursuant to a referral made by the Minister of Justice under Section 617(b) [now 690(b)]; and
5. eligibility for compensation would only arise when Sections 617 and 683 [now 690 and 749] were exercised in circumstances where all available appeal remedies have been exhausted and where a new or newly discovered fact has emerged, tending to show that there has been a miscarriage of justice.

As compensation should only be granted to those persons who did not commit the crime for which they were convicted (as opposed to persons who are found not guilty), further criteria would require:

(a) if a pardon is granted under Section 683 [now 749], a statement would be required on the face of the pardon or on an investigation that the individual did not commit the offence; or

(b) if a reference is made by the Minister of Justice under Section 617(b) [now 690(b)], a statement by the Appellate Court, in response to a question asked by the Minister of Justice pursuant to Section 617(c) [now 690(c)], to the effect that the person did not commit the offence.

It should be noted that Sections 617 and 683 [now 690 and 749] may not be available in all cases in which an individual has been convicted of an offence which he did not commit.

It should be noted that, under the ICCPR, entitlement to recovery may be affected by non-disclosure on the part of the accused. On the other hand, the Federal-Provincial Guidelines provide that any blameworthy conduct or the lack of due diligence by the claimant may affect the quantum of recovery, not the entitlement.

3. 1986 Manitoba Guidelines for Compensation for Wrongfully Convicted and Imprisoned Persons

The Manitoba Guidelines provide a wider scope for eligibility. They provide:

> "It should be noted that Sections 617 and 683 may not be available in all cases in which an individual has been convicted of an offence he did not commit: for example, where an individual has been convicted and a verdict of acquittal is later rendered by an appeal court. As well, these provisions would not apply to convictions for provincial offences. In such cases, the individual may be eligible for compensation where, on independent investigation, there is conclusive evidence that the individual did not commit the offence and did nothing to unduly cause the investigation to focus on him."

The Guidelines also provide for a limit on compensation for non-pecuniary damages of $100,000.

It was forcefully argued by counsel for the Province of Manitoba that both the Manitoba Guidelines pertaining to compensation for the wrongfully convicted and the trilogy of damage cases in the Supreme Court of Canada provide a fixed limit of $100,000 for non-pecuniary damages. It was submitted that this figure, with appropriate adjustments for inflation, should apply to compensation for the wrongfully convicted. Before considering whether or not there should be a cap placed on the damages arising from a wrongful conviction, it is necessary to consider the nature of the injury suffered by accused persons, generally, and subsequently by Thomas Sophonow, in particular.

What Are the Effects of Wrongful Conviction and Imprisonment Which Should be Considered in Determining the Appropriate Compensation?

The Federal Provincial Task Force Report observed at page 15 of its report:

> "In many cases it is precisely the mental anguish and loss of reputation which have most affected the wrongfully convicted person and it would appear reasonable to make amends for these injuries by way of financial recompense."

I am in complete agreement with this statement.

What then are the factors to be taken into account when considering compensation? Mr. Justice Evans, in the Commission of Inquiry Concerning Adequacy of the Compensation Paid to Donald Marshall, JR. (Nova Scotia, 1990) took into account the following factors suggested by Professor Kaiser:

1. loss of liberty. This may be particularized in some of the following heads. Indeed some overlap is inevitable.
2. loss of reputation;
3. humiliation and disgrace;
4. pain and suffering;
5. loss of enjoyment of life;
6. loss of potential normal experiences, such as starting a family;
7. other foregone developmental experiences, such as education or social learning in the normal workplace;
8. loss of civil rights;
9. loss of social intercourse with friends, neighbours and family;
10. physical assaults while in prison by fellow inmates and staff;
11. subjection to prison discipline, including extraordinary punishments imposed legally (the wrongfully convicted person might, understandably, find it harder to accept the prison environment), prison visitation and diet;
12. accepting and adjusting to prison life, knowing that it was unjustly imposed;
13. effects on the claimant's future, specifically the prospects of marriage, social status, physical and mental health and social relations generally.

To these I would add the following:

14. The effects of post acquittal statements by public figures, police officers and the media.

These factors may be subsumed in various headings which I will utilize but they will all be considered in the following pages.

The fundamental rights which are adversely affected by wrongful conviction and imprisonment

Wrongful conviction and wrongful imprisonment have a devastating effect both on society and on the individual victim.

Deprivation of liberty

As a result of confinement in a penal institution, an individual is deprived of personal liberty. Liberty is at the core of the essential rights of a citizen of a democratic country. The Magna Carta, the Great Charter of 1215, provides in essence that no free man is to be arbitrarily deprived of his liberties. This concept has been a cornerstone of democracy for nearly 800 years.

It is significant that during the French Revolution the leaders of the oppressed French people on their march from Marseilles to Paris brought with them, as their battle cry, the words "Liberté, Egalité, Fraternité". It is noteworthy that they placed the fundamentally important democratic concept of liberty as their first principle. Freedom and liberty are the bedrock concepts of Canadian rights, as they are of all democracies. The Canadian Charter of Rights and Liberties provides in Section 7 that no Canadian is to be deprived of that freedom without a fair trial before an impartial judge and jury.

It was the exercise of capricious acts of imprisonment by King John that led to the drafting and execution of The Magna Carta. It was capricious acts of imprisonment that were one of the factors that led to the French Revolution more then 500 years later. Capricious imprisonment deprived citizens of the State of their most basic right of liberty. It is not surprising that the right to be free from capricious imprisonment has for centuries been a fundamental right of citizens of democracies. Wrongful conviction and imprisonment similarly results in the deprivation of this most basic freedom. It has dire consequences for the individual. The wrongfully convicted must experience the same sense of outrage, frustration, isolation and deprivation as these capriciously imprisoned by tyrants. The result is the same for both victims. It must have very serious consequences for the State when it wrongfully takes away from one of its citizens that basic and fundamental right to liberty. It demonstrates the failure of our system of justice. Failures lead to a lack of confidence in police and the courts. That, in turn, can lead to a fear that anyone may be wrongfully convicted and imprisonment. Society must do all that is humanly possible to prevent wrongful convictions and, when they occur, to adequately and fairly compensate the victim.

Not only must the deprivation of liberty be considered, but also the length of time spent in prison and the nature of the imprisonment.

Damage to reputation

To wrongfully convict someone of a crime, particularly that of murder, is to forever damage the reputation of that person. The damaged reputation is bound to have lasting and bitter effects on the individual in all aspects of his life, whether at work or with his neighbours and with his family.

Loss of privacy

Democracies are based upon the recognition of the importance of the individual and of the innate dignity of every individual. An important part of that individual dignity is derived from and based upon privacy. Every person requires a place where, from time to time, he or she can be free of restraint, surveillance and interference, a place where a person can think, plan and dream. However, prison is synonymous with constant and unremitting surveillance. A prisoner has no privacy. Prison brings not only the deprivation of freedom of movement but also the deprivation of any sense of privacy. Constant surveillance means that even the most basic physical functions of emptying the bowels or bladder must be performed in view of others.

Humiliation

The life of a prisoner is one of myriad instances of personal humiliation. This is demonstrated by the constant presence of guards, by transportation in handcuffs and the often degrading searches required on the occasion of visits by family members.

Danger of physical assaults

To live in prison is to swim with sharks and to walk with tigers. Prisoners live in an atmosphere of high tension and resulting stress. There is the ever-present danger of physical attack. The constant threat of violence is palpable in a penitentiary setting. This is particularly true of a maximum-security facility but often equally true of over crowded, understaffed remand centres.

Loss of enjoyment of life

A prisoner is deprived of many of these attributes which contribute to the enjoyment of life. They would include the loss of the ability to associate with friends and family. To work in a garden, to undertake a home improvement project, to assist family members or neighbours, to attend a show, a play or a concert, to teach a child to skate or swim, all of these activities are taken away by imprisonment.

Continuing effects of imprisonment

Prison means a disruption and termination of so many plans, whether for the home, the family or the community. It means that, even upon release, there is always a difficulty in obtaining employment, and that there will be a loss of income, loss of job training, loss of possibility of job promotion and loss of pension benefits, which may never be recouped.

Resulting psychological damage flowing from the subjection of the individual to prison life and prison discipline

Time in prison may often result in a lifetime of psychiatric disability.

We will later review the effects of imprisonment on Thomas Sophonow. Before doing that, we should consider first of all whether there should be a cap on the damages flowing from wrongful conviction and imprisonment.

Should There be a Cap Placed on the Damages Flowing from Wrongful Conviction and Imprisonment?

On behalf of the Province of Manitoba, it was strongly urged that there should, indeed, be a cap placed on damages for wrongful conviction and imprisonment.

Counsel for Manitoba also argued that to award compensation without a cap would result in flooding the courts with claims and straining the financial resources of the Province. I cannot accept this argument. Claims such as these will always be difficult to establish. It will never be easy for a claimant to establish his innocence. In the absence of a scientific discovery, such as the ability to test for DNA, which may establish the innocence of the

accused and the guilt of another party, it will always be exceedingly difficult for an individual to demonstrate his innocence.

The argument of Mr. Olson suggests that the criminal justice system is replete with instances of wrongfully convicted accused. I pray God that this is not correct. If Crown Counsel, Defence Counsel and the Judiciary fulfil their demanding roles our system should work effectively. Yet I acknowledge that constant vigilance will always be required to ensure that it does. It is essential that the administration of justice does all that is humanly possible to avoid instances of wrongful conviction. It should not happen. If it does, the occasions must be rare. To argue that there are many cases of wrongful conviction is to contend that our system is fundamentally flawed and in disarray and that is not apparent. Yet I agree that there may well be some cases which should be reconsidered. This case demonstrates the need for the establishment of an independent body to review, in appropriate cases, allegations of wrongful convictions.

RECOMMENDATION

- **I recommend that, in the future, there should be a completely independent entity established which can effectively, efficiently and quickly review cases in which wrongful conviction is alleged. In the United Kingdom, an excellent model exists for such an institution. I hope that steps are taken to consider the establishment of a similar institution in Canada.**

In any event, if the State commits significant errors in the course of the investigation and prosecution, it should accept the responsibility for the sad consequences which will inevitably flow from them.

Next, it was said that the Manitoba Guidelines themselves indicate that there should be a cap of $100,000 placed on non-pecuniary damages, subject only to any increases that would flow from inflation. Further, it was stated that the Supreme Court of Canada, in the trilogy of negligence cases (*Arnold v. Teno,* [1978] 2 S.C.R., 287; *Thornton v. School District no. 57,* [1978] 2 S.C.R., 267; *Andrews v. Grand & Toy,* [1978] 2 S.C.R., 229), placed a cap upon non-pecuniary damages, even for these most grievously injured plaintiffs. The position taken on behalf of the province was that the damages suffered as a result of wrongful conviction cannot be any greater than those suffered by someone who has become a paraplegic as a result of a negligent act.

As well, in submissions made for imposing a cap, reliance was placed upon the case of *Muir v. Alberta* (1996), 36 Alta L.R. (3d) 305. In that case, an action was brought against the State, namely, the Province of Alberta. Ms Muir was sterilized and confined in a secure institution for nearly 10 years. It is true that her case was, of course, brought against the Province of Alberta and that the trilogy cap was applied to the non-pecuniary damages. This may have been either inappropriate or appropriate in the context of that case. In any event, for the reasons which follow, I cannot agree with these submissions that a cap should be placed on non-pecuniary compensation arising from wrongful conviction and imprisonment.

Dealing first with the Manitoba Guidelines. Their title suggests that they are no more than that. I am required by the Order in Council to make my recommendations with regard to the appropriate compensation for Thomas Sophonow. That I must do in light of the principles which I consider to be applicable to the case. The Guidelines are just that. They are not an act of the Legislature but simply a guideline.

Nor can I accept that the trilogy of cases should govern the upper limit of compensation. For policy reasons, in those cases, a cap was placed upon the non-pecuniary damages recovered by severely injured plaintiffs, in motor vehicle accidents. There are very great differences between this case of a wrongfully convicted and imprisoned person and a case which gives rise to personal injuries, even those with the most debilitating consequences.

Personal injuries most frequently occur in motor vehicle accidents. Traffic accidents are a major cause of death and injury in Canada. Yet, for Canadians, the motor vehicle is looked upon as an essential part of life: essential for access to a place of employment; for day to day living; for shopping; for ferrying children to school and sports; and for taking the family's annual vacation trip. If the motor vehicle was to be a part of every family's life, motor vehicle insurance premiums had to remain manageable. Uncapped damages would raise premiums astronomically. In these circumstances, there was a need for a policy decision. In addition, in these cases, damages were granted for all present and future pecuniary losses.

It is true that the same cap has been imposed in tort cases which did not arise from motor vehicle accidents. However, in the vast majority of the cases, the defendants were individuals or corporations.

The consequences of a negligent act can be tragic and the victims are regarded with sympathy, kindness and compassion by society. By contrast, those wrongfully convicted and imprisoned are invariably looked upon with contempt, scorn, suspicion and fear.

In *Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130, the Supreme Court of Canada unanimously agreed that there should not be a cap placed on damages for libel. The basis for uncapped damages was explained in these words:

> "Yet to most people, their good reputation is to be cherished above all. A good reputation is closely related to the innate worthiness and dignity of the individual. It is an attribute that must, just as much as freedom of expression, be protected by society's laws.
>
> Democracy has always recognized and cherished the fundamental importance of an individual. That importance must, in turn, be based upon the good repute of a person. It is that good repute which enhances an individual's sense of worth and value. False allegations can so very quickly and completely destroy a good reputation. A reputation tarnished by libel can seldom regain its former lustre. A democratic society, therefore, has an interest in ensuring that its members can enjoy and project their good reputation so long as it is merited.

> To make false statements which are likely to injure the reputation of another has always been regarded as a serious offence.
>
> Although it is not specifically mentioned in the *Charter*, the good reputation of the individual represents and reflects the innate dignity of the individual, a concept which underlies all the *Charter* rights. It follows that the protection of the good reputation of an individual is of fundamental importance to our democratic society.
>
> Further, reputation is intimately related to the right to privacy which has been accorded constitutional protection. As La Forest J. wrote in *R. v. Dyment*, [1988] 2 S.C.R. 417, at p. 426, privacy, including informational privacy, is '[g]rounded in man's physical and moral autonomy' and 'is essential for the well-being of the individual'. The publication of defamatory comments constitutes an invasion of the individual's privacy and is an affront to that person's dignity.
>
> The consequences which flow from the publication of an injurious false statement are invidious.
>
> Every time that person goes to the convenience store, or shopping centre, he will imagine that the people around him still retain the erroneous impression that the false statement is correct. A defamatory statement can seep into the crevasses of the subconscious and lurk there ever ready to spring forth and spread its cancerous evil. The unfortunate impression left by a libel may last a lifetime."

That approach should be adopted in cases of wrongful conviction and imprisonment. In addition to the devastating damage to an individual's reputation that invariably follows a wrongful conviction, there is yet another reason for finding that there should be no cap on the compensation payable in the case of Thomas Sophonow. It flows from his loss of liberty while in prison and the almost inevitable psychiatric scarring that ensues.

Imprisonment, when it is wrongful, constitutes a very serious, injurious act that should not be lightly regarded. Certainly, capricious imprisonment at the whim of the State has not been tolerated for centuries. The great Writ of Habeas Corpus was used to combat just such imprisonment. It is truly the writ of freedom and the writ of free people. Wrongful conviction may not be as grave a wrong as capricious imprisonment but its consequences for the prisoner are equally destructive.

As well, society needs protection from both the deliberate and the careless acts of omission and commission which lead to wrongful conviction and prison. These acts could all too easily lead to the abuse of individuals and groups deemed to be troublesome

to the government of the day. One of the best methods of controlling that abuse is by ensuring that there is no cap imposed on the damages flowing from a wrongful conviction. A cap could all too easily become the license fee payable for wrongful convictions. It cannot be forgotten that a wrongful conviction is as much a wrong to the administration of justice and to our society, as it is to the individual prisoner. Wrongful imprisonment is the nightmare of all free people. It cannot be accepted or tolerated.

In those exceptional cases, where wrongful conviction is established, the damages flowing from it must be significant not only to provide compensation for the individual wronged but also for the benefit of all citizens by serving as a curb on the excesses of the State. However, the damages must be based on clear principles and must always be appropriate, taking into account the circumstances of the conviction and imprisonment and the wrongfully convicted individual.

It is worth observing that the injuries suffered by Thomas Sophonow are in many ways far greater than those suffered by Mr. Hill as a result of the libellous statements made by the Church of Scientology. For example, Mr. Hill's house was not firebombed. He was not told "we know who you are". He was not told by a neighbour "its best to keep on the good side of a murderer". He was not ostracized at work. Nor were pictures of him in handcuffs leaving the courthouse broadcast in the local media when it was reporting on a local murder. He was not required to give to his children the painful explanation that he was wrongfully convicted and imprisoned.

Further, he did not suffer from post-traumatic stress disorder with all its serious ongoing and permanent consequences. I must add that neither do those who suffer from serious personal injuries have their homes firebombed, or receive implied threats or endure the outright contempt of neighbours, those in their community and those in their place of work. Thomas Sophonow has had a very heavy burden to bear. It was heavier than many of those who endured libellous comments. It was heavier than those who suffered terrible permanent personal injuries. The burden that Thomas Sophonow has borne all these years must at times have been crushing.

Mr. Neufeld observed that the prevailing trend in the United States is to do away with caps on these damages. He noted that recently, in Chicago, several claims arising from wrongful convictions were settled at an average figure of $8,500,000 each. This is an additional indication that there should not be a cap on damages in these cases.

Further, in the case of wrongful conviction, it is the State which has brought all its weight to bear against the individual. It is the State which has conducted the investigation and prosecution of the individual that resulted in the wrongful conviction. It is the State which wrongfully subjected the individual to imprisonment.

From the individual's point of view, these actions can have a devastating effect. From the point of view of society, these acts serve as a demonstration of the errors of the State. Every citizen needs to be certain that, if he is involved in a police investigation and trial, he will be treated fairly and that errors will occur as rarely as humanly possible. If, as I believe it to be, personal freedom is one of the cornerstones of our democratic society

then that personal freedom should not be lightly taken away. It can only follow as the result of a fair trial, which in turn, requires a fair investigation and fair proceedings throughout the legal processes involved.

A significant feature of wrongful conviction and imprisonment is the inevitable damage to the reputation of the individual that follows. The reputation as a criminal follows the wrongfully convicted person everywhere. It is a blight upon his family life and its shadow is cast upon his loved ones. It poisons the atmosphere of his work. It is present in his neighbourhood and infests his relations with his neighbours. It follows him remorselessly and the infectious virus is present wherever he may settle. It is inescapable and appears to be incurable. For example, the damage that it has brought to the reputation of Thomas Sophonow has continued to this day and it gives every indication of continuing indefinitely. It continues despite a generous public acknowledgement of his innocence and an apology. It is a stain that has been present for all these years and it seems that it cannot be eradicated.

The research of Dr. Grounds and Mr. Neufeld, and the experience of Thomas Sophonow, all demonstrate that the wrongfully convicted feel an unending sense of frustration and anger for the lost years. There is a yearning of an obsessional nature to clear their names and to live as equals with their neighbours.

There can be no doubt of the great stigma that is attached to a murderer. It was Shakespeare who described the crime as "murder most foul". Those alleged to be murderers have always carried with them the mark of Cain. Generally, there can be no more grievous crime in the eyes of society. There can be no greater stigma unless the murder is that of a very beautiful young woman and there is an allegation of sexual assault.

In my view, there should not be any cap placed on the damages flowing from a wrongful conviction and imprisonment.

In summary, this flows from three aspects of wrongful conviction cases. The first is the wrongful deprivation of liberty, that basic democratic right of freedom. The second is the devastating and continuing damage to the reputation of the wrongfully convicted. The third is the permanent psychological scarring that is inflicted on the wrongfully convicted. The power of the State has been improperly exercised in these cases. It would be tragic if the State, by judicial decisions or by its own legislation or regulation, were to benefit from the imposition of a cap on non-pecuniary damages flowing from an unjustifiable breach by the State of a fundamental Charter right of one of its citizens.

Thomas Sophonow's Personality Before and After his Arrest

Following the foregoing review of the general effects of the wrongful conviction and imprisonment, it is now appropriate to consider their effects on Thomas Sophonow. In

order to gauge these effects, we must take into account his personality and background prior to his arrest on March 12th, 1982.

Thomas Sophonow's background

Thomas Sophonow was 28 years old at the time of the murder. He turned 29 in March of 1982. He was the youngest of three children. His brother, Philip, was the eldest, followed by his sister, Catherine. His parents were separated and the difficult task of raising three young children fell upon his mother. There is no doubt that life was extremely difficult for the family. They were always very poor. He remembers stealing fruit and vegetables for the family with his brother.

His childhood was frequently disrupted. He was placed in foster homes and in juvenile detention facilities. As an adolescent, he clearly sought to belong to some organization, perhaps to any organization. He was, for a time, associated with the Neo-Nazi party and then with the Hare Krishna group. The disparity of those two groups indicates to me that he was a young man desperately trying to find a place for himself in society.

Not surprisingly, in light of his unfortunate family background, he has a criminal record. The offences are generally minor in nature and none of them indicate any aspect of violence. His record is set out as Appendix "G" to this Report. It is noteworthy that his last conviction was several years prior to his arrest on the charge of murder.

He admitted as well that he had been charged with a drug offence in 1981 and that those charges had been withdrawn. He also admitted that he had been the courier of stolen goods prior to December 1981.

At a young age, he had a relationship with a woman and fathered a child that he has neither seen nor supported. It may be that the woman formed a relationship with someone else since she does not appear to have sought support from him.

He was married to Nadine on June 19, 1978. They had a daughter, Kimberly, who was born April 8, 1979. He seems to have been truly fond of Kimberly although he did not contribute to her support after he separated from Nadine. On December 23rd, he sought to see his daughter and give a present to her, which he had brought from Vancouver. When he could not make arrangements that were satisfactory to both Nadine and to him, he left the present for her with his brother and sister-in-law.

Work record prior to his arrest

His work record seems to have evolved from somewhat sporadic to reasonably steady. He worked as a labourer at Ocean Cement for 4 to 6 months in 1972. Subsequently, he was a bouncer at the Smiling Buddha Cabaret in the mid-1970s. He worked at Wagner Engineering in Vancouver from 1976 to 1978. While there, he advanced from floor sweeper to apprentice machinist. In 1979, while he was in Winnipeg, he worked at one job which he could not recall before Versatile and then worked at Versatile as an

apprentice machinist from mid 1979 to mid 1980. He also worked at Domar Renovations from 1979 to 1980.

In 1980 – 1981, he worked in Vancouver as a bouncer at the Lougheed Hotel. At about this same time, he appears to have started work at R&T landscaping with his brother-in-law. There is no doubt he was good with his hands and liked what he did while landscaping and gardening. Its difficult to determine how long he worked at landscaping. However, the business did appear to have customers.

The fact that he advanced from floor sweeper to apprentice machinist at Versatile is an indication of his ability to work at jobs which required training and skill. His history prior to his arrest in March 1982 gives an indication of gradually increasing maturity.

Thomas Sophonow testified that there had been a time, particularly after his separation from Nadine, that he abused alcohol and cocaine. However, he stated that after three months he was able to overcome these addictions and I accept this testimony.

It was said by Counsel for the Province of Manitoba that Thomas Sophonow is so prone to telling lies that his evidence should be rejected. Yet there are segments of his evidence that I accept without reservation. However, that is subject to the caution that I must use great care in assessing his testimony. This I have done.

His personality prior to his arrest

There is widely conflicting testimony as to Thomas Sophonow's personality prior to his arrest in 1982. Counsel for the Province of Manitoba relies heavily on the evidence of Jackie Henke which is supported, it is said, by the statements of Cindy Coe and Thomas Sophonow's former wife, Nadine. I should make it clear that I have great difficulty in accepting the evidence of Cindy Coe. She was quite ready to testify that the twine that she saw in the back seat of Thomas Sophonow's car was similar to that which was used in the murder of Barbara Stoppel. More importantly, she seemed greatly interested in receiving the reward or a share of the reward for her work in identifying Thomas Sophonow as the murderer. I did not have the benefit of seeing Nadine and I have only read her statements to the police. Not unsurprisingly, a recently separated woman did not speak well of her former husband. Yet it is significant to me that, in her statements to the police, nothing indicated that there were any incidents of violence by Thomas Sophonow while they were together.

Evidence of Jackie Henke

Jackie Henke stated that she and Thomas Sophonow had been friends and that she had no reason to lie about anything to do with her previous relationship with him. I found her to be extremely hostile towards Thomas Sophonow. She described Thomas Sophonow as secretive – that he was not an outgoing type who interacted with a lot of people. She described him as quiet, private and sociable to a point. She said that he had strange moods when he used drugs and that, although he was strange and quiet, he could explode. Much was made of her evidence that he threatened to kill a babysitter of hers by the name

of Cheyanne. However, she very fairly made it clear in the course of her testimony that he had said that as a joke and she understood that he was not serious about the threat.

He was not violent towards her but he had on one occasion inflicted bruises on her daughter. Much was made of the fact that Jackie Henke testified that, on the first occasion that she met Thomas Sophonow, he came to her door with someone else who had a sawed off shotgun. They were apparently seeking the return of a diamond ring they believed she had in her possession. It is hard to believe that this incident made any significant impression on Jackie Henke. It was subsequent to that event that she met and established a relationship with Thomas Sophonow, lived with him for a time and called herself his friend. These are hardly the actions of anyone who considered Thomas Sophonow to be a violent person.

Counsel for Manitoba noted that Thomas Sophonow testified that he had been an outgoing, fun loving person prior to March 1982. Yet he submitted that the evidence indicates quite the contrary. He pointed to the testimony of Jackie Henke, in which she described him as quiet, introverted, with a temper and engaged in criminal activities.

I accept her evidence that, when he was with her, Thomas Sophonow was quiet, introverted and played mind games. I am satisfied that on occasions, like most of humankind, he exhibited a temper. If he did, there was no violence displayed except perhaps on one occasion towards her very young daughter. As well, Thomas Sophonow has confirmed her testimony to the effect that he had been the courier for stolen goods. Yet the obvious hostility that she displayed towards Thomas Sophonow coloured her evidence. It was very clear that she was certainly not going to say anything positive about him.

Evidence of Beth Olsen (Peterson)

The evidence of Beth Olsen was given with great sincerity and sensitivity. She admitted that she had a drinking problem when she met Thomas Sophonow in the fall of 1981. At that time, she was a regular patron at the Lougheed Hotel. She had the opportunity to see Thomas Sophonow at work as a bouncer. She said that he was never violent, despite the confrontations which he must have encountered on almost a daily basis. She testified that he was well liked by those he worked with.

Beth and Thomas Sophonow became friends and she moved into the place where Thomas Sophonow was living with his sister, sometime before Christmas of 1981. She may, indeed, have been naive; she may, indeed, have had a problem with alcohol at the time; but her evidence was persuasive and moving. She found Thomas Sophonow to be a gentle, sensitive person who was loving and caring. She said that they did not mix too much with people at work and they liked to do things together. It would seem that Beth Olsen was also helping Thomas Sophonow with his landscaping business. It probably was not well established at that time, as she was involved in designing business cards. On the other hand, I do accept the evidence of Thomas Sophonow and his brother-in-law that they did have a number of customers and had begun working for them in the landscaping business.

Counsel for Manitoba said that little weight should be given to her evidence: her addiction to alcohol, her infatuation with Thomas Sophonow and the relatively short time that she knew him all indicate that little, if any, weight should be given to her testimony. I cannot agree with that submission. I found her evidence credible, carefully and sincerely given. I accept that she did, indeed, find Thomas Sophonow to be a gentle, caring and loving person and that she liked to be with him.

Evidence of Rachel Devine

Rachel Devine is a niece of Thomas Sophonow and a very pleasant forthright person. Her evidence was given in a straightforward manner and I accept her evidence. She described Thomas Sophonow as her favourite uncle prior to March of 1982. She said he was very kind and always with young relatives for special events. He was always present for birthdays and Christmas dinners. She stated that after his term in prison he was "a faceless man we didn't know any more". She found him severe and judgmental over trivial issues. He had no expression and no personality. She said that there had been a reconciliation after an incident when she was an adolescent and he had called her a slut. They are once again close and she spoke well of him. She is now a happily married woman with children of her own.

Evidence of Raymond Johnson

Raymond Johnson was Thomas Sophonow's brother-in-law who went into the landscaping business with him. He described Thomas Sophonow as a happy go lucky, fun person before he went to prison. After prison he said that Thomas Sophonow had mood swings and became angry over nothing. His evidence must be assessed with caution in light of his addiction to alcohol, which is not surprisingly, a recurring problem for him. Yet I can take from his evidence that he thought of Thomas Sophonow as a happy person before his arrest.

Evidence of Philip Sophonow

Philip Sophonow has had alcohol problems and has suffered from mental illness. As well, he has a criminal record. I have taken this into consideration when assessing his evidence.

Philip Sophonow was supportive of his brother. He said that his brother was an outgoing friendly person prior to March 1982 He stated that there was a marked difference in his personality after that date, when he became moody, quiet and introverted. He testified with moving sincerity as to his brother's description of finding that another prisoner had hung himself. The recounting of this incident obviously had a great impact on Thomas Sophonow who was reduced to tears in relating it. I accept this portion of Philip Sophonow's evidence. It is obvious that this incident, like so much of his prison experience, had a profound effect on Thomas Sophonow. Beyond this, the extent to which I can accept his evidence is that of a loyal older brother who considered Tom to be a changed person following his time in prison. Counsel for Manitoba contended that, in light of his addiction to alcohol, his mental affliction, and his criminal record, no weight should be given to any of his testimony. I agree that I can only accept a small portion of his testimony.

This review makes it clear that the evidence as to Thomas Sophonow's personality from those who knew him prior to March 1982 varies widely. This may not be too unusual. All of us may display different personalities to different people at different times. In any event, I have attempted to carefully assess the evidence of all the witnesses. I have made due allowance for their faulty memory, their frailties and biases.

In my assessment, I have taken into account both his acts of charity and his evidence as to his life after his release from prison in 1985, which I will review later. It is true that Thomas Sophonow's "charities" were referred to in a somewhat derogatory tone of voice. Nonetheless, they indicate true charity in that they are to a large extent acts of anonymous giving. Prior to March of 1982, he had given to a church organization in Vancouver. There is as well the very real act of charity in purchasing the Christmas stockings and delivering them anonymously to the hospitals. There is no doubt that he, in fact, made those purchases at the Safeway store and that he delivered the stockings to the hospitals. He did not want to give his name or make more of it than was appropriate. It was submitted (not by Counsel for Manitoba) that he wanted the cashier at Safeway to know what he was going to do with the stockings. However, I think that this is unfair and goes too far. He did not give his name to the cashier, he simply explained what he was going to do with the stockings.

Taking into account all the evidence I have heard and making due allowance for its frailties, I find that the personality of Thomas Sophonow prior to March of 1982 was that of a quiet man, perhaps somewhat introverted. He did have a caring side, he was sensitive and gentle and had many fine instincts. He had a prior record for offences that were minor, petty and not violent. It is true that he was continuing to act as a courier of stolen goods. Yet it appears that he was certainly not becoming wealthy from his criminal activity. From his lifestyle and the condition of the ancient car he drove, it is apparent that any income from his criminal activities was insignificant. I am convinced that he would soon have completely abandoned that activity. For a few months after his separation from Nadine, he had a problem with alcohol and drugs, which he overcame. He was not simply a petty criminal. He was overcoming a disastrous childhood. He was struggling to find himself in various organizations and relationships. He possessed a character and personality of such a nature that he could contribute, and has now contributed, to society. I am supported in this view by his conduct subsequent to his arrest and incarceration.

Like so many of us, Thomas Sophonow is a complex character. After careful consideration of the evidence, I conclude that he was not simply a petty criminal, callous, insensitive and beyond redemption. I conclude that there were appropriate grounds for Dr. O'Shaughnessy, Mr. Grymaloski and Dr. Silverthorne to base their conclusions as to the effect of imprisonment on Thomas Sophonow.

His personality after arrest

It is appropriate to consider the evidence of people who have known Thomas Sophonow well following his years in prison. If it is possible to gain some insight into the personality and character of a person prior to a traumatic event through the testimony of

individuals who knew him before that event, then the reverse must also be true. No doubt, the nature of the traumatic event may affect the post-event assessment. If, for example, as a result of the event, the victim was struck blind then personality traits which were related to his powers of observation will be lost and any assessment of his personality would be limited to that extent. Nonetheless, many aspects of personality and character are of an enduring nature. Thus, the testimony of people who have known Thomas Sophonow well since his incarceration can reveal what his basic personality and character must have been before his imprisonment.

Evidence of Janet Jones

Mrs. Jones frequently attended the trials of Thomas Sophonow. She became convinced that he was innocent. After his release, she lived with him in Vancouver for almost two years. She found Thomas Sophonow to be a warm, caring person. He was hardworking, sensitive, gentle and never gave any indication that he was a violent person.

Evidence of Rebecca Sophonow

She was a very honest, perceptive and impressive witness. She described meeting Thomas Sophonow through his sister. She stated that he disclosed very early in their relationship his conviction for murder and gave her the newspaper reports of the case to read.

She said that he is a caring person. She said that when the relationship began she had a two-year-old daughter. Thomas Sophonow has always taken a great interest in her daughter's well-being, education and, particularly, her dancing lessons. Another daughter and a son were born of their relationship, now solemnized by marriage. From her testimony, it is apparent that he has an obvious and deep affection for Rebecca and all three of their children. Apart from one outburst, which any parent can understand, he has demonstrated a personality which is loving and caring towards his wife and children. Thomas Sophonow is now a good and loving husband and father. He is supporting his family well. This too confirms my conclusion with regard to his personality prior to March of 1982.

Work

His employer's assessment indicates that Thomas Sophonow is a skilled and reliable worker. It is true that he has had a large number of accidents at work. However, this is accounted for by his preoccupation with clearing his name, which, in turn, flows directly from his wrongful conviction and imprisonment.

The Arrest, Detention and Incarceration and the Effect on Thomas Sophonow

There is no doubt that Thomas Sophonow was detained and under arrest from the time of his interview by Sergeants Wawryk and Paulishyn. The interview has already been reviewed. Suffice to say, it included the unnecessary, demeaning and humiliating strip search and anal cavity search midway through the interview. The officers agreed that

they were making suggestions to Thomas Sophonow which they hoped would lead him to confess. These included references to his identification by eyewitnesses and questions with regard to his mental health. They agreed that they were playing "mind games" with him. It was certainly appropriate for police to use these tactics in 1982. The investigation of crime cannot always be governed by the Marquis of Queensbury Rules.

However, the manner in which this interview was conducted was such that, in my view, it was not unlikely that Thomas Sophonow would make errors and untruthful statements when he was talking to these officers. I have already found that the interview was, to say the least, traumatic for Thomas Sophonow. At one stage, as a result of the manner in which the interview progressed, he believed that he really had murdered Barbara Stoppel. No weight can or should be placed on anything stated by Thomas Sophonow during the course of this interview. It was an unhappy introduction to the tragic events which followed.

It is now necessary to consider the conditions of his imprisonment.

Places of Incarceration

The Winnipeg Remand Centre

Any penitentiary or remand centre would be an unpleasant place. However, among prisons, the Winnipeg Remand Centre was the worst or certainly one of the worst prison facilities in Canada. The John Howard and Elizabeth Fry Society of Manitoba made a report on the facility dated April 28th 1983. It stressed the depressing nature and deplorable conditions of the Remand Centre. It reported that:

> "The abhorrent conditions under which presumptively innocent persons are detained in Manitoba are, on the whole, much worse, not better than that experienced by sentenced persons."

Bruce Henley was a custodial officer at the Winnipeg Remand Centre when Thomas Sophonow was there. He described the centre in graphic terms as, quite simply, a "hell hole". He said the institution was understaffed and overcrowded. It was impossible to take a shower unless inmates flushed the toilets. It was a terrible place at the time that Thomas Sophonow was there. There were instances of fraud involving the food supplies which resulted in miserable and inadequate food being served to the inmates. During the time that he was there, Thomas Sophonow lost 80 pounds, going down from 200 to 120 pounds. Mr. Henley thought that Thomas Sophonow had spent more time in the Remand Centre than any other prisoner. Apart from a day or so, he was detained in "B" Block, which was reserved for those charged with the most serious offences.

He was transferred to the Headingly Jail between the first and second trials for a period of approximately one month so that he could gain some weight. He describes his cell there as resembling that shown in the movie and described in the book, Silence of the Lambs. While he was at that institution, they checked the gallows on a weekly basis. This obviously had a depressing effect on him.

Counsel for the Province of Manitoba submitted that, although conditions at the Remand Centre were unpleasant, they were equally unpleasant for all who were there and should therefore not form the basis for an award of aggravated damages. I accept that submission. However, I must take into account the abysmal conditions that existed at that institution while Thomas Sophonow was there. They certainly must be reflected in the assessment of compensation but they do not constitute aggravated damages. It is simply that all the conditions of incarceration must be considered. For example, time spent in minimum security or a halfway house would not be as difficult to undergo as time spent in maximum security.

For Manitoba, it was also contended that Thomas Sophonow was responsible for his stay there. The position has been put forward that, as a result of his earlier record, it was impossible for him to obtain bail pending his trial. This submission cannot be accepted. The facts surrounding the killing were shocking and, if Thomas Sophonow had been granted bail, it would have truly shocked the conscience of the community. The alleged killer did not know the victim and allegedly came from British Columbia. It would have appeared that, if he were granted bail, his appearance at his trial could not be assured. Further, the nature of the crime was such that he would have been considered a danger to the community. In 1982, only these two factors would have been considered. The granting of bail in these circumstances would have been unthinkable.

His arrest and charge resulted inevitably in his incarceration in the Remand Centre pending his trial. At the Remand Centre, the facilities for exercise were minimal to non-existent. For the greatest part of the day, he was confined to his cell in B Block. He spent 13 long, difficult and hellish months in that facility.

Stony Mountain Penitentiary

On the 18th of April, 1983, he was transferred from the Winnipeg Remand Centre to Stony Mountain Penitentiary. He remained in that facility until July 25th of 1983. For that entire period, he was kept in segregation. This meant that he was in a cell that measured 5.5 feet by 10 feet for 23 hours a day, every day. No doubt this was done for his own protection. Yet the conditions were harsh and for some 97 days he lived a most difficult life. Indeed, during the one hour when he was let out of his cell for exercise and a shower there was no allotted place of exercise. He obtained his exercise outside in a narrow courtyard alone, apart from prison guards.

Saskatchewan Penitentiary

On July 25th, 1983, he was transferred to the Saskatchewan Penitentiary at Prince Albert. He remained at that institution for two years and five months, apart from transfers to the Winnipeg Remand Centre for the third trial.

Time in custody

It is not uncommon, in sentencing an offender, for the judge to take into account the time spent in pre-trial custody. Very often, that time is doubled to take into account the

difficulties of pre-trial custody. That would be most appropriate in Thomas Sophonow's case. The pre-trial custody in the Winnipeg Remand Centre was a particularly harrowing experience. I would hasten to add that the time of incarceration in segregation at Stony Mountain was certainly not much better. This time, spent in isolation, should also be counted as double time. The time at the Saskatchewan Penitentiary was also unpleasant. I accept Thomas Sophonow's evidence that there were problems with the plumbing at that facility and that it too was generally an unsanitary and miserable facility. Taking into account the double time for the period spent in the Remand Centre and in isolation at Stony Mountain, the time spent by Thomas Sophonow in penal institutions should be considered to be about 5 years.

It cannot be forgotten that Dr. O'Shaughnessy testified that jails are unpleasant places. He said: "those in penitentiaries are swimming with sharks, they are dangerous and unpleasant places." The simmering violence in these institutions is palpable. The constant surveillance and the body searches following visits of family and friends emphasized the degradation and humiliation that must always accompany incarceration. The ever-present prison bars, the sound of locking doors, the sense of utter isolation all combined to demonstrate and emphasize the complete deprivation of freedom.

Next, must be considered the effects on Thomas Sophonow of the wrongful conviction and imprisonment. Let us first consider the evidence of the experts.

Expert Evidence Regarding the Effects of Wrongful Conviction and Imprisonment on Thomas Sophonow

Dr. Clifford Silverthorne

Dr. Silverthorne has been Thomas Sophonow's family physician from a time just before his trip to Winnipeg in December 1981 to the present time. His *curriculum vitae* is set out in Appendix "H" of this Report. He is a very conscientious and caring family practitioner. He has attempted to treat the whole patient. As an example, he introduced Thomas Sophonow to his church in an attempt to assist him with his emotional problems.

He testified that Thomas Sophonow has continued to show signs of stress over the years. He stated:

> "The long term consequences of the stress are variable, but certainly long term stress has been shown to be a risk factor in coronary artery disease. Can be a risk factor of high blood pressure which can lead to other things such as stroke, can be a risk factor in excess acid, duodenal ulcers, gastrointestinal irritable bowel, chronic back pain, neck pain, tension related symptoms. There is a myriad of potential problems." (Inquiry, Vol. 10, page 984)

He added that stress can shorten a person's life expectancy. It was his opinion that Thomas Sophonow's underlying psychological state made him more accident prone because of his preoccupation with the events of his arrest and imprisonment and the struggle to clear his name. This led to his lack of attention and, thus, the accidents at his workplace.

Dr. Silverthorne expressed the view that Thomas Sophonow's depression was an underlying condition that has existed from the time that he came out of prison. (Inquiry, Vol. 10, page 986). He felt that a "lot of his symptoms are reflective of anxiety and stress". He stated, "Thomas Sophonow's preoccupation with what has happened to him clouds his thinking every minute". He also expressed the view that what happened to Thomas Sophonow's emotionally can never be reversed. He felt that his quality of life would certainly improve, now that he was aware that he was free and acknowledged to be innocent. He stated that:

> "He is an incredibly strong person to have gone through what he has and still maintain his sense of compassion and perspective. He will probably always have that fear when he awakens that he won't know where he is and he will always have that insecurity about the future because of his imprisonment. Counselling will need to be ongoing and long term".

It was pointed out by counsel for Manitoba that the doctor had not made any reference, in the Workmen's Compensation Board (W.C.B.) claims, to an underlying cause of stress. Dr. Silverthorne explained that, if he had made such a notation, it would have meant that there would have been endless correspondence with the WCB and probably a denial of responsibility. He felt that the WCB was interested in the primary cause of stress and that is what he put into the report. I can appreciate the additional work that it would have entailed for a very busy and conscientious family practitioner to set forward on each occasion the underlying cause of stress. It may be unfortunate that he did not do so but it certainly is understandable and does not affect the tenor of his evidence pertaining to Thomas Sophonow's problems.

Thomas Sophonow was injured in two motor vehicle accidents. The first was in 1995 when the vehicle in which he was a passenger was struck from behind. Fortunately, that accident did not result in a lasting or significant injury. In 1996, there was another accident. Once again, Thomas Sophonow was a passenger in a car which was struck from behind. On this occasion, he suffered serious injuries to his eyes which occasioned a lengthy absence from work and gave rise to the possibility that he could no longer work as a machinist.

During his cross-examination, it was pointed out to Dr. Silverthorne that, in his notes, it was only on 10% of Thomas Sophonow's visits that there were any references to flashbacks, bitterness or rage about the wrongful conviction or the people who he believed caused the problem. However, Dr. Silverthorne responded that this meant that there were 20 visits when there were such complaints. That would be much higher than it would be for any other patient in his practice. I accept this explanation.

Counsel further pointed out that there was only one reference to the wrongful conviction in 1987, two in 1989 and none between 1989 and 1994. The doctor responded that, in his view, this only meant that Thomas Sophonow's control of things was reasonable during this time. He likened it to "stuffing a lid on a garbage can, but as pressure builds up it's bound to blow off." The fact that there were so few references to the wrongful conviction in his notes simply indicated to the doctor that Thomas Sophonow was coping with his problems. He thought that Thomas Sophonow is a man with underlying stress which may diminish somewhat if there are no particular "stressors" to push him over the edge. However, the moment that there is something to push him over the edge, the symptoms would arise again. He did not think that the stress of the motor vehicle accident or other accidents, although stressful, were anywhere near the level of the stress resulting from the wrongful conviction and imprisonment.

He noted that Thomas Sophonow experienced neurological problems, namely, out of body experiences and difficulty controlling his temper following the March 12, 1996, motor vehicle accident. He felt that the added stress of this accident brought him to a point where he could not focus. The injury to the eye he considered to be simply a stress factor that tipped Thomas Sophonow over the balance. In his opinion, the major disability in the motor vehicle accident was not related to psychological problems. Rather, the accidents tipped Thomas Sophonow over the edge. He summed up his position in this way:

> "The stress of the last few years have been the kind of a major stress on top of the chronic one." (Vol. 10, page 1098)

The chronic one was the stress resulting from the wrongful conviction and imprisonment.

Joel Grymaloski

Mr. Grymaloski is a psychologist who has counselled trauma victims, including David Milgaard. His *curriculum vitae* is attached to this Report as Appendix "I". He first saw Thomas Sophonow in May of 2000. In the course of his counselling, he administered to Thomas Sophonow the Millon Clinical Multi Axaial Personality Inventory. He determined that Thomas Sophonow's only elevation was in avoidance. In his opinion, this resulted from Thomas Sophonow's post-traumatic stress disorder in that he exhibited a long-standing pattern of blocking out traumatizing events. He also testified that Thomas Sophonow's involuntary reliving of events, particularly the inmate who hung himself, his state of hyper-arousal, on guard flight or fight affect, his conflicts with his wife and children and his avoidance of social events, are all consistent with post-traumatic stress syndrome.

He expressed the opinion that Thomas Sophonow, as a result of the family dysfunction which surrounded his childhood, had a transitory conduct disorder. He explained that this type of disorder is transitory, in that it could reasonably be said to have disappeared in the years following his childhood.

He expressed the opinion that Thomas Sophonow would require extensive, ongoing treatment. He thought that it would take some time for a counsellor to develop a trust

relationship with Thomas Sophonow. Yet he said that the establishment of that relationship is fundamentally important to the counselling and treatment of Thomas Sophonow.

He thought that Thomas Sophonow was undergoing avoidance of emotion on those occasions when he stares into space. In his view, one of Thomas Sophonow's coping strategies is to over-intellectualize and over-analyze facts and details.

Mr. Grymaloski added that, if Thomas Sophonow suffered from an anti-social personality disorder, it would be manifesting itself now and it is not. He was asked whether Thomas Sophonow might, like his brother, suffer from a mental illness. He responded that the literature was too contentious to suggest that there are genetic links in mental health.

Dr. Roy O'Shaughnessy

Dr. O'Shaughnessy is an extremely well qualified forensic psychiatrist. He is presently the Executive Vice-President of the American Academy of Psychiatry and Law. Dr. O'Shaughnessy's qualifications are set out in Volume 50 of the Inquiry at pages 1574 to 1579. Dr. O'Shaughnessy was an extremely impressive witness and I accept his opinion regarding Thomas Sophonow's present state and his future problems. As I stated earlier, I am of the view that Thomas Sophonow did not withhold any information from Dr. O'Shaughnessy which could have or would have changed Dr. O'Shaughnessy's opinion with regard to his diagnosis and prognosis.

In Dr. O'Shaughnessy's opinion, the psychiatric and psychological damage that arose from Thomas Sophonow's wrongful conviction can best be summarized under the label "Post- Traumatic Stress Disorder" as well as "Altered Personality Traits". He testified that Thomas Sophonow lives under the sinister shadow cast by his conviction as a murderer. He is totally preoccupied with the events of the '80's. He has experienced a great deal of rejection and anticipates that everyone perceives him as a murderer. He has an obsessional preoccupation with securing his exoneration and has almost a paranoid vision. In the doctor's opinion, it was too early to say if the public exoneration has helped him. Certainly, as long as these proceedings are ongoing, they will reinforce what happened to him in the 80's.

It is significant that Dr. O'Shaughnessy testified that he had reviewed Dr. Silverthorne's records and noted that Thomas Sophonow appears to have mentioned only infrequently the problems in his life after he was released from jail. Dr. O'Shaughnessy found this not surprising.

He testified that the time that Thomas Sophonow spent speaking with the machine, "Bertram", was clearly a psychotic episode. He was of the view that Thomas Sophonow had not yet completely separated from that psychotic episode because he still refers to the conversation with the machine as "we".

Dr. O'Shaughnessy found evidence of depression in Thomas Sophonow primarily from the clinical records which he had reviewed. He stated that there had not been any change in Thomas Sophonow's personality since the exoneration. In fact, he has experienced greater difficulty over the past six months as a result of these proceedings. Thomas Sophonow is particularly sensitive to any perception of misbehaviour or unethical conduct of police officers and lawyers. This is a direct consequence of the experience of the wrongful conviction and incarceration.

Based on the information that he received, including his criminal record, Dr. O'Shaughnessy described Thomas Sophonow as having problems of a delayed maturity. These he attributed in large measure to the social disruption he experienced in his family of origin. He knew that Thomas Sophonow had identified briefly with cult groups in an attempt to establish his identity. He described this as "trying to find out who he was and find a place of attachment and affirmation". He added: "you know I really saw him really being a bit of a delayed maturity, immature young man." (Inquiry, Vol. 15, page 1624).

In his opinion, there did not appear to be any evidence to support a clear designation of a personality disorder because "that pattern really hadn't been persistent or pervasive". Dr. O'Shaughnessy described Thomas Sophonow's record as one of "petty crimes, mostly property offences, minor ones that were kind of silly". He noted that there was no evidence of any crime of violence or of a sexual nature. He said that there was no indication of aggressive tendencies or the kind of more serious features which would have lead him to believe he may have "an ADAD social personality disorder". (Inquiry, Vol. 15, page 1625).

Dr. O'Shaughnessy testified that prisons were bad places full of anti-social individuals and that prison environments cause a great deal of harm to most individuals who go there:

> "The general outcome of people who have gone to prison is that they are worse when they emerge than when they went in." (Inquiry, Vol. 15, page 1588)

Dr. O'Shaughnessy also expressed an opinion as to Thomas Sophonow's motive in failing to disclose the portion of his alibi relating to the Christmas stockings. He suggested that:

> "Thomas Sophonow came from an emotionally and financial impoverished background and received a great deal of charity from others that caused him a considerable amount of embarrassment and shame. The gesture of bringing the candies to the hospital was in large measure, a gesture of sympathy for the situation of the children, having been there himself and want to make it better for other kids; that wanting to keep it private was partly due to the intensely personal nature of the event and partly due to the strong rebellious streak that was oppositional at times by nature." (Inquiry, Vol.15, page 1584).

Dr. O'Shaughnessy thought that Thomas Sophonow's belief, at the conclusion of the interview with the Winnipeg Police officers, that he had actually committed the murder was that of a man who then lacked any sense of identity, was under the influence of the interrogation and susceptible to the power of suggestion.

Dr. O'Shaughnessy believed that Thomas Sophonow was only beginning to establish a relationship with the psychologist, Mr. Grymaloski. He expressed the view that psychotropic medicine and prolonged counselling would be important for his treatment.

Dr. O'Shaugnessy was aware of the car accident in 1995 and the more serious one in 1996. He expressed the opinion that these accidents did not have much effect on the core symptoms of Thomas Sophonow's post-traumatic stress disorder. However, he thought that they had obviously made his depression worse. In his opinion, persons afflicted with post- traumatic stress disorder do not have good coping skills and have a higher rate of psychological dysfunction associated with the normal vicissitudes of life. Thus, it was his opinion that Thomas Sophonow would not be able to cope as well as the average person with the injuries resulting from his accidents.

He observed that when the Inquiry proceedings are over, Thomas Sophonow will find a huge void in his life and that he will have a difficult time.

I accept, without reservation, his opinion as to the psychiatric problems and post-traumatic stress disorder suffered by Thomas Sophonow as a result of his wrongful conviction and imprisonment. It is apparent that the injuries suffered are severe and very long lasting, if not permanent.

Dr. Adrian Grounds

Dr. Grounds outstanding *curriculum vitae* is attached to this Report as Appendix "J". It is as impressive as was his testimony. I accept his evidence and opinions.

At the outset, it must be noted that Dr. Grounds had not seen Thomas Sophonow prior to his testimony and his evidence must be subject to that qualification.

Dr. Grounds is an eminent forensic psychiatrist. He is a lecturer at the University of Cambridge. He has studied eight individuals who had been incarcerated for periods from eight years and upwards. These people were wrongfully convicted and imprisoned. Five of the individuals studied had been involved in the Birmingham and Guildford pub bombings. All the individuals studied exhibited profound long-term effects. This surprised Dr. Grounds as he was not particularly looking for or expecting them. In his view, the only comparable effects in scientific literature involved those who had sustained trauma as a result of a disaster or being war victims or concentration camp victims.

Dr. Grounds was generally in complete agreement with the findings and conclusions of Dr. O'Shaughnessy. However, he also found that there was "enduring personality

change", a category of psychiatric disorder not recognized by the DSM – IV. He expressed a concern that perhaps Dr. O'Shaughnessy's conclusions had been understated because Thomas Sophonow had not been forthcoming about his prison experiences and some of the areas of conflict with his wife.

Dr. Grounds testified that counselling was essential and ought to have been provided to him immediately after he was released from prison. He was of the opinion that, in situations of wrongful conviction and imprisonment, there should always be professional counselling to help individuals deal with trauma and the transition into society.

Dr. Grounds expressed the opinion that counselling would be a long process with Thomas Sophonow. He expected it to be longer than with others because of the natural reticence of Thomas Sophonow to describe his experience and because of the avoidance and denial techniques that he had learned in prison.

Dr. Grounds further stated that he believed that the core symptoms of enduring personality change would not be alleviated as a result of counselling. In his opinion, those symptoms of mistrust, anger, fits of temper, withdrawal and paranoid ideation concerning police and lawyers will not change.

As well, Dr. Grounds agreed with Dr. O'Shaughnessy that there was very likely going to be a period of depression when the Inquiry proceedings finished. He also agreed that Thomas Sophonow's criminal record was not of the type of crime which would be expected to persist into adulthood. Rather, he described the offences as the type of criminal activity which would disappear with maturity.

Although he did not see Thomas Sophonow, I accept, in light of his experience with people who have been wrongfully convicted, his view that, in Thomas Sophonow's case, the core symptoms of enduring personality change will not change nor will they be alleviated by treatment.

Peter Neufeld

Mr. Neufeld spoke from his experience with men who had been wrongfully convicted, spent time in prison and then had been exonerated and released. He spoke of the great difficulties that these men faced. He expressed the opinion that the harrowing consequences of false imprisonment have a lasting affect. He spoke as well of the relationship between time spent in prison and the psychological damage that it causes individuals. On this issue, he stated:

> "...obviously, you know, the longer you are in prison the more the pain is of actually being in prison but I haven't seen any studies done to suggest that the longer you are in prison the more severe the consequences of incarceration once you are released. Either way its going to be a lifetime disability." (Inquiry, Vol. 56, page 9927)

I accept this opinion.

These opinions very clearly establish that Thomas Sophonow has suffered and will continue to suffer for the rest of his life from the effects of severe post-traumatic stress disorder. Further, as a result of the post-traumatic stress disorder, he will always be more vulnerable to any added stress and less adaptable to injuries.

Assessing the Effect of Wrongful Conviction and Imprisonment on Thomas Sophonow

General comments

The compensation payable to an individual who has suffered as a result of wrongful conviction and imprisonment will vary with the individual. The effects of a wrongful conviction for a university president, a dean of a faculty, an outstanding member of a profession may be more devastating than they would be for an individual who had a prior record and an irregular work history. However, the individual with the criminal record and the irregular work pattern may still suffer extremely grave consequences from the wrongful conviction and imprisonment.

Indeed, it is people in that category who often are the most vulnerable to State actions. They are the least able to protect and care for themselves. They should not and cannot be hastily set aside as unworthy of consideration. Much will depend on the assessment of the less fortunate individuals and their future prospects. For example, I am satisfied that Thomas Sophonow's criminal record and his somewhat sporadic work record arose from his unfortunate childhood and his immaturity. He simply did not have the opportunity to learn and mature as do most young men. His record since his release from prison demonstrates his present state of maturity, strength, responsibility and reliability. Bearing in mind then, that compensation must vary with the individual, let us consider how Thomas Sophonow was affected by his wrongful conviction and imprisonment.

Although I will consider this under the various applicable headings, it must be emphasized that all those aspects of damages are interlocking and that they have a cumulative effect upon the individual.

Deprivation of liberty

Deprivation of liberty must be considered as a distinct and proper basis for compensation. It has been seen that it was the liberty of the individual, (in the sense of freedom from capricious imprisonment) that was the cornerstone of the Magna Carta and the battle cry of the French Revolutionaries. It is the fundamental right of every democratic citizen.

In considering the effect of deprivation of liberty, it will be necessary to consider both the length and conditions of the imprisonment in assessing its effect on the individual. I have

referred to Thomas Sophonow's 13 months in the Winnipeg Remand Centre. I agree that the conditions in the Remand Centre should not give rise to aggravated damages. All who had the misfortune to be held in the Remand Centre suffered as a result of its abysmal conditions. However, certainly the nature of the institution can be taken into account in considering its effect upon the individual. The effect cannot have been anything less than devastating. It is appropriate to consider it as the equivalent of 26 months in any other maximum security institution.

Thomas Sophonow's 97 days in segregation at Stony Mountain, in his cell for 23 hours of the day with one hour for some sort of lonely exercise and a shower, should be considered as double time. This is therefore the equivalent of over six months in a maximum security prison.

In the two years and five months in the Saskatchewan Penitentiary (with some time back at the Winnipeg Remand Centre for the third trial), he was within the main prison population. With his relatively minor prison record, Thomas Sophonow had never spent any significant time in any penal institution, let alone a maximum security federal prison. All penitentiaries have an element of danger, as described by Dr. O'Shaughnessy earlier. The danger for Thomas Sophonow must have been somewhat greater in light of the nature of the killing and, after the third trial, the allegation of sexual assault.

It can be seen that there was no easy prison time for Thomas Sophonow. Rather, it was all extremely hard time. The 45 months served in prison was not nearly as long as the time served by Mr. Milgaard. Yet it was a difficult and significant period that should be considered as the equivalent of 61 months in prison. There can be no doubt that the effects on Thomas Sophonow were devastating and permanent.

Loss of privacy

The incarceration of Thomas Sophonow in the Winnipeg Remand Centre, the Stony Mountain Penitentiary and the Saskatchewan Penitentiary meant that he suffered a complete loss of privacy. The constant surveillance was such that even his basic bodily functions could be observed. Visits of friends and relatives meant that he could be the subject of a strip search.

Loss of association

His imprisonment meant that he could not associate with his family or friends and neighbours of his choosing. He could not join or take part in the activities or organizations of choice, whether service clubs, or coaching hockey, soccer or baseball.

Humiliation

The wrongful conviction and imprisonment brought with it humiliation. He was transported in police or prison vehicles. He was photographed in handcuffs leaving the Court. That picture haunted him and his family many years later. Prison discipline, the visits of family, with the possibility of ensuing bodily searches, all added to the sense of humiliation that must have accompanied his time in prison.

Loss of enjoyment of life

Certainly, the time in prison meant that he suffered a loss of enjoyment of life. Even the simplest activities, such as going to a shopping mall or a garage, the opportunity to work on home repair projects or in the garden, all were denied to Thomas Sophonow. Quite simply, apart from the dubious pleasure of enjoying institutional meals, there was no "enjoyment" of life for Thomas Sophonow.

The time in prison also meant that he would have difficulty securing employment on his release. Opportunities for job training and promotion were lost forever. So too, was the ability to obtain medical and health benefits and there certainly would be a reduction in any pension benefits he might secure. It constituted a major disruption in his entire way of life. He lost any possibility for the enjoyment of his life, or for the satisfaction derived or benefit obtained from doing work of his choosing.

It cannot be forgotten that Thomas Sophonow did have friends where he worked at the Lougheed Hotel; he did have friends, such as his brother-in-law, who hoped to establish a landscaping business with him; he did have a happy association with Beth Peterson (Olsen). The wrongful conviction and imprisonment deprived him of these associations and laid waste to his life from the 17th of March, 1982, to the present.

The physical and psychological effects of the wrongful conviction and imprisonment

Thomas Sophonow has suffered and will continue to suffer from a post-traumatic stress disorder. The core symptoms which he exhibits are recurring traumatic memories, anxiety, paranoia, enhanced startle response, autonomic nervous system disorder, impaired sleep and panic attacks. The wrongful conviction and imprisonment has destroyed his sense of fair play. He feels as though he will not be treated in the same way as others, he has a sense of isolation and often depression. Although counselling, treatment and medication may help some of these aspects, such as depression, the core symptoms of the post-traumatic stress disorder are permanent and will not be relieved.

As a result of the psychological injuries which he has suffered, he will always have difficulty coping with stresses in his life including the stress resulting from the motor vehicle accidents. The accidents and the results flowing from them cannot and should not be taken into account in assessing the effect of the wrongful conviction on Thomas Sophonow. However, his decreased ability to cope with the stress that the accidents have occasioned can and must be taken into account. The three trials, the two appeals, the two

applications for leave to appeal to the Supreme Court of Canada, and indeed, this Inquiry have all led to increased stress for Thomas Sophonow. It is true that persons injured in an accident can experience post-traumatic stress disorder. However, the psychiatrists were unanimous in their opinion that the stress caused by a single act, such as an accident, has much less impact that does the constantly repeated stress occasioned by wrongful conviction and imprisonment. In the latter situation, the aggravating acts, which led to the stress disorder, were repeated every day. A stress disorder occasioned in this way is far more likely to last a lifetime.

The stress disorder has led Thomas Sophonow to experience difficulties in his relationship with his wife and children. It has caused him to withdraw and to feel isolated, unwanted and disliked. It has contributed to most of the accidents that he was involved in at work. He will require counselling and medication throughout his life. So too, will his family require counselling.

Thomas Sophonow's initial stress was occasioned by the manner in which the first interview with the Winnipeg Police officers was conducted. It has been exacerbated and continued by the manner in which the rest of the investigation was undertaken, by the trials and by the manner in which the cases were prosecuted. It has been continued by his imprisonment. It has been continued by the statements of the former Chief of Police and others in public life who indicated, even after his acquittal, that he was guilty of the murder. The psychological scarring that he has suffered is just as grave and just as permanent as would be the loss of a limb.

I conclude as well from the medical evidence that there are very grave long term consequences of the stress from which he suffers. It is a risk factor in coronary artery disease and can be a risk factor in high blood pressure which can lead to strokes. It can as well be a risk factor in excess acid, duodenal ulcers, gastro-intestinal irritable bowel, chronic back pain, neck pain, tension and related symptoms. The risk of these consequences must be taken into account in assessing his compensation. Further, it can be expected that there will be a period of depression for Thomas Sophonow after this Inquiry is completed.

Loss of reputation

At the outset, it was suggested that Thomas Sophonow had no reputation to lose: that he had a criminal record and lacked a record of lengthy continuous employment with one employer. That is not an appropriate approach to Thomas Sophonow's situation. It is one thing to have a poor reputation resulting from his past convictions. However, they were all of a relatively minor nature and there was not any significant aspect of violence and, most certainly, no suggestion of sexual assault. It is quite another to have unfairly been identified as the murderer of a beautiful 16 year old woman. There is a universal disgust and repugnance for anyone who would murder a young woman. That repugnance is still greater if there is an inference of sexual assault attached to the murder.

Let us consider the effect upon Thomas Sophonow of the wrongful conviction for murder. The most grievous assault on a person's reputation is that of an allegation of a

murder. The allegation is aggravated by the circumstances of the murder of Barbara Stoppel. It is true that the Manitoba Court of Appeal acquitted Thomas Sophonow in 1985. It is true that, in 2000, the Manitoba Government and the Winnipeg Police Service very courageously exonerated Thomas Sophonow and instituted this Inquiry. However, the effect on Thomas Sophonow of his wrongful conviction has been devastating and unfortunately continues to be so. Not only were there convictions of murder but, in the third trial, there was the allegation of sexual assault. The Crown alleged that the motivation for the murder arose from a sexual assault. The Winnipeg Sun newspaper referred to this, as it had every right to do, in its report of the trial. The stigma has attached to Thomas Sophonow, at least from March of 1982 until June of 2000 when the Government of Manitoba and the Winnipeg Police Service exonerated him. Unfortunately, his reputation as a murderer has persisted to the present time.

Following his acquittal by the Manitoba Court of Appeal in 1985, there were a number of statements by prominent persons which appeared to confirm his guilt and gave credence to the stigma that followed Thomas Sophonow.

The then Attorney General stated in the Legislature that Thomas Sophonow did not meet the requirements of the Guidelines to qualify for compensation.

The former Chief of the Winnipeg Police stated to the media that: "the right man was brought before the courts." It was this statement that confirmed Mr. Dobson's, the shop steward at Thomas Sophonow's place of employment, belief in his guilt.

The former Mayor of Winnipeg made statements to the media criticizing the Court of Appeal for acquitting Thomas Sophonow. All these public comments reported by the media must have confirmed and strengthened the public's belief in his guilt.

This same attitude is reflected in the evidence of the police officers referred to earlier. In the testimony of Sergeants Wawryk and Paulishyn, for instance, there was some doubt expressed by them as to the innocence of Thomas Sophonow. Indeed, when the hearing was adjourned for a time on the basis of an application brought by Winnipeg Police Service pertaining to the ongoing investigation, the Winnipeg media speculated that perhaps the Winnipeg Police Service were having second thoughts and that Thomas Sophonow was, indeed, the murderer. All this demonstrates that the stigma still persists to this day and unfortunately may well continue for some time to come, if not forever.

How his reputation as a murderer has affected Thomas Sophonow in many aspects of his life

Workplace

In this aspect, the evidence of Mr. Dobson, the shop steward, was particularly telling. He was a very thoughtful, forthright and credible individual. He stated that he and other workers at the company were of the opinion, when Thomas Sophonow was hired, that he was a murderer who got off on a technicality. He related a tragic and illuminating incident. Thomas Sophonow arrived at a Christmas party with his wife and two of his

children. Not one of his co-workers would sit with him and his family. This was hardly an example of Christian charity. Yet how graphically it illustrates the tragic consequences of his reputation as a murderer. It vividly reflects the reality of the world which Thomas Sophonow faced. How very difficult it must have been for him and, indeed, for his family to be singled out for such cruel treatment.

Mr. Dobson testified that he now wished to apologize to Thomas Sophonow in light of the public announcement of his innocence. Yet, despite this, he still retains a lingering doubt which he thought would probably remain until such time as someone else was convicted of this crime. He then looked about the hearing room noting that "all society owes Thomas Sophonow an apology". All right-thinking people must agree with that comment.

His evidence clearly establishes how devastating was the effect of the wrongful conviction of Thomas Sophonow. In the clearest possible manner it illustrates how dire were the consequences for Thomas Sophonow and his family flowing from his reputation as a murderer. Unfortunately, the evidence of the police officers reflects the same lingering doubt expressed by that very fine and forthright citizen, Mr. Dobson.

The family

On one occasion, the older children observed a television news broadcast. It dealt with a suspect in another murder (the Abbottsford killer). In the course of the broadcast, Thomas Sophonow's name was mentioned and the old file material was broadcast of Thomas Sophonow being led away in handcuffs from the courthouse in Winnipeg. The children ran to their mother asking if their father was a murderer. What an incredibly difficult time this must have been for Thomas Sophonow and the entire family. This evidence demonstrates the difficulties that the wrongful conviction and imprisonment have occasioned to the family and his relations with them.

Relationship with neighbours

A neighbour discussing a matter with Thomas Sophonow expressed his opinion that it was always better to keep on the good side of a murderer. This statement was made after his exoneration. It too demonstrates the lasting effect of the wrongful conviction and the continuing difficulties that it has created and continues to create for him with his neighbours.

The larger community

There are two incidents which bring home the crushing effect of a reputation of a murderer. First was the firebombing of his house. The house was badly damaged and the family was lucky to escape with their lives. Yet how difficult it must have been to continue to live in that neighbourhood with that deadly threat so clearly inferred.

Earlier, Thomas Sophonow and Rebecca lived in an apartment building. He received notes with the words "we know who you are" and another with the word "murderer". These incidents undoubtedly flowed from his reputation as a murderer.

The injuries suffered by Thomas Sophonow as a result of his wrongful conviction and imprisonment have been crushing.

Aggravated damages

On behalf of Thomas Sophonow it was submitted that I should give consideration to awarding aggravated damages. In my view, aggravated damages arising out of wrongful conviction and imprisonment should only be awarded in those circumstances where the words or actions of those involved in the investigation, prosecution and incarceration clearly exceed the appropriate bounds of the work of investigators, prosecutors and institutional custodians. On that basis, there are some instances which must be considered as the basis for such an award. It will be seen, in the course of the review, that some errors and omissions might well have been considered as a basis for awarding aggravated damages. However, taken in the context of the times in which they occurred, I thought it more appropriate to consider them in the assessment of the non-pecuniary damages.

The first photo pack line-up and the police interrogation in Vancouver of Thomas Sophonow

It will be recalled that Sergeants Wawryk and Paulishyn were anxious to obtain evidence as to identification before they went to Vancouver to interview Thomas Sophonow. They put together a photo pack to be viewed by Mr. and Mrs. Janower. They agreed that the photo pack could have been better and that there were flaws. Indeed, there were flaws. The whole procedure was unfortunate. There were only seven photos in the pack and that of Thomas Sophonow stood out for a number of reasons. The photo pack was, to say the very least, unfair. Even then, the identification was tentative at best. Mrs. Janower said that: "if its anyone its this one", indicating the photo of Thomas Sophonow. The officers agreed that this photo pack was not good. It was not. It is significant that the officers had no difficulty putting together a second photo pack that was fair. Their actions relating to the photo pack were erroneous and unfair.

It is not necessary to repeat the unhappy history of the interrogation in Vancouver. Suffice to say that it was not recorded verbatim and it was never shown to Thomas Sophonow for his comments as to errors, omissions or necessary additions. Midway through the interrogation, there occurred the deliberate, humiliating and unnecessary strip search and body cavity search. This was an unconscionable action. Further, I have found that the only reasonable conclusion is that the officers demonstrated to Thomas Sophonow how the door of the Ideal Donut Shop could be locked. He could not have been aware of that through any other means. This was acknowledged to be the most damaging evidence presented against Thomas Sophonow. The notes of the interrogation do not refer to the locking gesture and this was a very significant omission. This can only have been a deliberate omission.

These actions taken together come very close to justifying an award of aggravated damages. Yet I should not be unduly critical of officers carrying out their duties under a great deal of pressure, in trying circumstances, to the extent of awarding aggravated damages for their errors of commission and omission. Nonetheless, I must be critical of these actions and take them into account in the overall award of compensation without making them the subject of an award of aggravated damages.

Failures in the acknowledged duty to disclose matters

It was conceded by Mr. Lawlor, Junior Crown Counsel in the first and second trials, that the information given to him by Mr. Williamson as to the existence of a manufacturer of the twine in Portage la Prairie ought to have been disclosed to Defence Counsel. He also agreed that the correspondence pertaining to the chemical test, which would identify with certainty the manufacturer of the twine, should have been given to Defence Counsel. This was not done. Thus, although it is conceded that the information about Mr. Williamson should have been given to Defence Counsel, it was not. He thought that it had been given to Mr. Dangerfield but Mr. Dangerfield could not recall being told of this. I must conclude that withholding this information was an erroneous and deliberate act. The consequences of the act were detrimental to the Defence. It permitted the Crown to make much of the twine allegedly coming from British Columbia, thus implicating Thomas Sophonow who was a resident of that province.

Failure to disclose matters which should have been disclosed to Defence Counsel

It was admitted that certain material ought to have been given to Defence Counsel. This I emphasize was determined on the basis of the practice at the time. Indeed, I have referred only to matters that Crown Counsel have acknowledged ought to have been disclosed to Defence Counsel. Obviously, it matters not to Thomas Sophonow or his counsel whether the failure to disclose resulted from a police decision to withhold material or a Crown's decision that it should not have been disclosed. These failures I reviewed earlier. They include the failure to disclose:

- the erroneous identifications made by Mr. Doerksen and his continued lack of certainty;
- the statements made by eyewitnesses under hypnosis;
- the statements of the McDonald's witnesses;
- the red mesh stocking;
- the second photo line-up;
- the report of the polygraph operator;
- the Luczenczyn report;
- the McQuade interview; and
- the statement of Mrs. Peasgood.

The list is a long one. The failure to disclose these matters certainly had serious consequences for the Defence. Clearly, the failures resulted from the erroneous acts of Crown Counsel and the police, some of which were deliberate and some were

inadvertent. Yet I prefer to proceed on the basis that these acts were such that they should not be the subject of an award of aggravated damages.

The allegation of a sexual assault upon the victim in the third trial

It is not necessary to review this point in detail again. It will be remembered that the Trial Judge in the third trial instructed the jury that there was no evidence upon which they could base a finding that there had been sexual assault. The Court of Appeal went further and stated that there was not "a particle of evidence" pertaining to sexual assault.

I agreed with this finding of the Court of Appeal. The allegation once made may have affected the jury's deliberations even though they had been instructed not to consider it. The evidence was so minimal and its deleterious effect was so grave that it ought never to have been put forward. To adduce this evidence must have been a considered act of the prosecution.

Nonetheless, unfortunate as it was, it should not be the subject of aggravated damages. The Crown must be able to put forward its case in the manner which it deems appropriate without any fear of an award of aggravated damages. However, it must bear the consequences of this decision. It is a factor to be taken into account the wrongful conviction. The allegation certainly resulted in additional adverse publicity and probably increased difficulties for Thomas Sophonow while he was in prison. As well, the allegation must have still further damaged his reputation. Although it cannot be the basis for awarding aggravated damages, it must certainly be considered in assessing the amount of compensation payable to Thomas Sophonow.

Pecuniary Damages to be Awarded for the Wrongful Conviction and Imprisonment

Requirements for future counselling and medication

There is no doubt that Thomas Sophonow will require counselling throughout his life. His family as well will be in need of counselling. Further, there will be medication that he will require over the years. On this issue I accept the submissions of counsel for Thomas Sophonow that the annual cost of counselling for him and his family and the medication for him will be $10,000 per annum and that the present value of that figure is $187,000. Further, to provide the gross-up required for the tax payments needed for this fund there should be added another $30,000. Taking into account Thomas Sophonow's share of responsibility, I would fix this sum at $197,000. This fund should be administered either by the Province of Manitoba or by an institution approved by the Province. From this sum should be paid all reasonable sums for medication required by Thomas Sophonow and for his counselling and that of his family.

Loss of income

The following evidence was adduced as to the work history of Thomas Sophonow:

- he worked as labourer for Ocean Cement for some four to six months in 1972;
- he worked as a bouncer at the Smiling Buddha Cabaret in the mid 1970s;
- he worked as an apprentice machinist for Wagner Engineering in Vancouver from 1976 to 1978. It was in this time that he was promoted from floor sweeper to apprentice machinist;
- in 1979, he worked at Versatile in Winnipeg from mid 1979 through 1980 as an apprentice machinist;
- he worked for Domar in Winnipeg on renovations also from 1979 to 1980; and
- in 1980 and 1981 when he returned to Vancouver, he worked for Lougheed Hotel in Vancouver as a bouncer.

This seems to be in the same period that he and his brother-in-law attempted to set up the landscaping business. To this effect, they acquired equipment valued then at some $3,000. They actually appeared to have acquired some contracts. Whether this business was operating at the time of his arrest is hard to say. Obviously, there would be a lull in the business over the winter and it would be surprising if much was to be done in this business before March 12, 1982, when he was arrested. It is difficult is to ascertain what he might have earned from this business although I believe he would have worked at it and derived some income from it.

There can be no doubt that he lost income which he would have earned during the years he was in prison. The material put forward by his counsel indicates that the present value of lost income as a labourer would have been $95,325. The lost income from work as a machinist would have been $116,500.

Based on his work history, both before and after his imprisonment, I believe that for most, if not all that time, he would have worked as a machinist with some time given to the landscaping business. Taking into account his share of the responsibility, I think the best that can be done is to fix the income lost at a total $100,000 for the years that he was imprisoned, which includes an additional six month period allowed for the time involved in finding a job after he was released.

Should there be interest on the pecuniary damages?

Counsel for Manitoba took the position that interest at the rate of 3% should only be paid from the date that the cause of action arose. That date was said to be June of 2000, when the apology and acknowledgement was made and the Order in Council passed which instituted this Inquiry. This contention I cannot accept. The cause of action arose on March 12th, 1982, the day that Thomas Sophonow was arrested and detained. The damage to his reputation, the commencement of his psychiatric scarring and his wrongful imprisonment commenced on that day. His injuries resulting from the errors and wrongs of the State started on that date and have been continued and exacerbated to the present

time. Basic fairness requires that interest be paid on his pecuniary and non-pecuniary damages from March 12th, 1982.

Most certainly, simple fairness requires that there be interest paid on his lost income. The manner in which the interest is calculated gives rise to problems. For example, he should have interest on the first year's wages from 1982, then the interest would be added each year for the income lost in the subsequent years of incarceration. In my view, it is easiest to award simple interest on the lump sum of $100,000 calculated at 1.5% per year from the 12th of March, 1982 to September 30th, 2001. This may appear to be too conservative. However, it seems to be both the fairest and simplest solution. That interest should run, as I said, from March 12, 1982 to the September 30, 2001.

There should as well be compensation for the landscaping-gardening equipment acquired. The value of that equipment I put at $3000 and that sum should also bear simple interest at 1.5% from March 12, 1982 to September 30, 2001.

Counsel for Thomas Sophonow stated that, because of the motor vehicle accidents and their effect on him, interest on his lost income should be suspended for three years beginning in 1996. (Inquiry, Vol. 62, page 10992). I agree that, on this amount of pecuniary compensation, there should be a three year rest for interest. However, for reasons that I will set out later there should not be a rest in the interest payable on the other pecuniary and the non-pecuniary compensation.

NON-PECUNIARY COMPENSATION

As a result of the wrongful conviction and imprisonment, Thomas Sophonow has suffered greatly. I have earlier set out the effects upon him. It is clear that the loss of liberty, the damage to his reputation and the effects of post-traumatic stress disorder have all had very serious and grievous consequences for Thomas Sophonow. It is impossible to divide the compensation that should be awarded under separate heads of damages. For example, the loss of liberty, the damage to his reputation and the psychiatric scarring, all these injuries combined have had cumulative effects on Thomas Sophonow. They have had and will continue to have a devastating effect on him.

What has he suffered? He suffered the physical consequences described earlier. He is psychologically scarred for life. He will always suffer from the core symptoms of post-traumatic stress disorder. As well, he will always suffer from paranoia, depression and the obsessive desire to clear his name. His reputation as a murderer has affected him in every aspect of his life, from work to family relations. The community in which he lived believed him to be the murderer of a young woman and that the crime had intimations of sexual assault. The damage to his reputation could not be greater. Those damages are continuing to the present time and, as I have stated earlier, will probably continue forever. His reputation as a murderer will follow him wherever he goes. There will always be someone to whisper a false innuendo. In the mind of Thomas Sophonow, he will always believe that people are talking about him and his implication in the murder of Barbara Stoppel.

It is the actions of the State which have led to these terrible consequences. It is both fair and essential that there be appropriate compensation awarded. Society as a whole has to know that, when a mistake is made, there is adequate compensation paid to the victim for the mistakes and errors of servants of the State. A fair award will reduce the likelihood of repetition of the errors which could lead to a wrongful conviction.

Thomas Sophonow has suffered greatly. I have carefully considered the submissions of Manitoba to the effect that he does not deserve the same compensation as, say, a wrongfully convicted person with an impeccable record and high standing. I agree that the compensation for Thomas Sophonow must be less. Yet the State cannot approach compensation on the basis that he was just "a young egotistical punk", thus, deserving little, if any, consideration. To recognize and approve that approach would be dangerous. As I have indicated, it could all too easily lead to an attitude that members of certain groups are less deserving of fair treatment. Members of a group composed of young men with criminal records are still entitled to fairness in police investigations, in prosecutions and trials. There is the very real danger that this same attitude, that the group was inferior, could arise from the purported beliefs, politics, nationality or colour of the members of the particular group. It is an attitude that cannot be accepted in police officers or prosecutors.

Thomas Sophonow is an individual who has demonstrated great strength in overcoming a difficult childhood, and wrongful conviction and imprisonment. He has, since his release, demonstrated great love for his family and a sense of responsibility for them. Above all, he is, like all of us, an individual entitled to respect and the recognition that he too possesses an innate dignity. Thomas Sophonow has been denied that recognition. He should not have been convicted and imprisoned for murder. It should not have been suggested that he sexually assaulted the victim. The devastating effects on Thomas Sophonow require adequate consideration. Taking into account his share of the responsibility for the debilitating consequences he suffered, it is my opinion that compensation for non-pecuniary damages should be $1,750,000.

What interest should be payable regarding the non-pecuniary damages?

The Province argues that, if interest is awarded at all, it should only run from the date the cause of action arose, that is, the date of this Commission, June 2000.

It was contended that, in 1983, there was no statutory provision for paying interest. Yet, in 1983, interest was paid on those occasions where it was customary for the Court to do so. If there had been a contract for the sale of goods that were delivered, but not paid for, I am sure that interest would run on the amount owing from the date of delivery of the goods.

The situation arising from Thomas Sophonow's case can be approached in the same manner if we assume that there is a social contract in existence. By its implied terms, the State contracted not to infringe the Charter rights of its citizens unless there was justification for doing so. The wrongful conviction of Thomas Sophonow was a denial of

his Charter rights without justification. Can it really be argued that interest would be payable on money due for a breach of contract but not for denial of basic freedom? I trust not.

Once again, basic fairness requires that interest be paid. If Thomas Sophonow's injuries were thought of as giving rise to damages against the Province, then his cause of action arose on March 12, 1982. As I said, the least complicated way to award simple interest is to fix it at 1.5% per annum commencing on March 12, 1982, and continuing through to September 30, 2001. This is certainly not an excessive rate of interest and the approach is fair to both parties. There should be no break in the payment of the interest for the three years resulting from the accident. The injuries flowing from the wrongful conviction and imprisonment, loss of liberty, damage to reputation and post-traumatic stress disorder continued to flow through 1996 to 1999. They started on the day of the arrest and continued to the present time. It is injuries suffered from his wrongful conviction that have to date and will continue to beset Thomas Sophonow. It is because of those injuries that he has a lesser ability to adapt to the injuries suffered in the accidents. Further, his stress will be greater because of his pre-existing injuries. There is no basis for a rest on the interest payable for the non-pecuniary damages.

Annuity

I would recommend that $700,000 from the award of non-pecuniary damages be set aside to provide a monthly sum for the life of Thomas Sophonow. It would be my recommendation that this be in the form of an annuity to be administered by the Province of Manitoba or an institution that it recommends. However, before acquiring an annuity, it would be necessary to undertake the necessary inquiries to see if this could be done without unfortunate income tax consequences. If it cannot be reasonably accomplished, then the entire amount of the award should be paid to Thomas Sophonow, with my recommendation to him that he arranges for $700,000 to be set aside in an annuity.

Further, an additional sum of $50,000 from the award of non-pecuniary damages should be set aside as an initial management fee to be paid to an entity approved by the Province of Manitoba and Thomas Sophonow. When that sum is exhausted, the management fee is to be paid from the fund itself, as required.

Consideration of the Stoppel family

A consideration of the Stoppel family and its sad sense of loss is of course beyond the scope of the Order in Council. However, conscience requires that I say something with regard to the Stoppel family. The family has suffered the loss of a beautiful daughter, who showed great promise for the future. Her warm and friendly presence was lost and it has left a void in the family that can never be filled. The family suffered through the trials. They felt a sense of relief when Thomas Sophonow was charged and convicted. They felt an extreme sense of malaise upon the recognition by the Province of Manitoba and the Winnipeg Police Service that Thomas Sophonow was innocent and had nothing

to do with the murder. They have been present every day of this Inquiry and have suffered through every day.

Rick Stoppel did what he considered to be his duty by advising counsel to the Inquiry of his recollection and interpretation of what was said to him by Mr. Whitley and Sergeant Biener.

The family has suffered through the revelations of mistakes made in the investigation and prosecution of Thomas Sophonow. They have faced their loss, the trials and this Inquiry with patience and dignity. I would hope that the Province will consider some form of compensation to the Stoppel family for the pain and suffering that has been occasioned to the family by the wrongful conviction and imprisonment of Thomas Sophonow.

COMMISSIONER

Appendix A

Order-in-Council

MANITOBA

Order in Council

No. 232 /2000

On Matters of State

To The Honourable the Lieutenant Governor in Council

The undersigned, the Minister of .....Attorney General..... submits for approval of Council a report setting forth that:

WHEREAS section 83 and section 96 of *The Manitoba Evidence Act*, C.C.S.M. E150, provide in part as follows:

> 83(1) Where the Lieutenant Governor in Council deems it expedient to cause inquiry to be made into and concerning any matter within the jurisdiction of the Legislature and connected with or affecting
>
> (a) ...;
> (b) ...;
> (c) the administration of justice within the province;
> (d) ...;
> (e) ...; or
> (f) any matter which, in his opinion, is of sufficient public importance to justify an inquiry;
>
> he may, if the inquiry is not otherwise regulated, appoint one or more commissions to make the inquiry and to report thereon.
>
> 96 The Lieutenant Governor in Council may make provision, either generally in regard to all commissions issued and inquiries held under this part, or specifically in regard to any such commission and inquiry, for
>
> (a) the remuneration of commissioners and persons employed or engaged to assist in the inquiry, including witnesses;
>
> (b) the payment of incidental and necessary expenses; and
>
> (c) all such acts, matters, and things, as are necessary to enable complete effect to be given to every provision of this Part.

AND WHEREAS Barbara Stoppel was assaulted and strangled during the evening of the 23rd of December 1981, and death ensued several days later;

AND WHEREAS following an investigation conducted by the Winnipeg Police Department, Thomas Sophonow was arrested and charged on the 12th of March 1982 with the murder, and

(a) A trial proceeded in the Court of Queen's Bench on the 18th of October 1982, which resulted in a mistrial as the jury was unable to reach a unanimous verdict;
(b) A second trial was held in the Court of Queen's Bench on the 21st of February 1983, and Thomas Sophonow was convicted of murder. That decision was overturned by the Manitoba Court of Appeal on the 13th of March 1984 and a new trial was ordered, a decision which was further affirmed by the Supreme Court of Canada on the 10th of December 1984;
(c) A third trial was held in the Court of Queen's Bench on the 4th of February 1985, with Thomas Sophonow again convicted of murder. The verdict was, once again, overturned by the Court of Appeal on the 12th of December 1985 which entered a verdict of acquittal on the basis that a fourth trial into this matter was not in the interests of justice; and
(d) Leave to appeal to the Supreme Court of Canada was refused by that Court on the 22nd of April 1986;

AND WHEREAS from 1998 to 2000, the Winnipeg Police Service reinvestigated the circumstances surrounding the death of Barbara Stoppel;

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AND WHEREAS based on the results of that investigation, the Chief of Police for the City of Winnipeg is now satisfied that Thomas Sophonow had no involvement in the death of Barbara Stoppel, and that the investigation is continuing to determine who is responsible;

AND WHEREAS the review by Crown Attorneys in the Department of Justice supports the results of the Winnipeg Police Service reinvestigation;

AND WHEREAS the Attorney General of Manitoba accepts the conclusion of the Chief of Police for the City of Winnipeg;

AND WHEREAS the Attorney General is of the opinion that this course of events has raised a number of questions about the administration of criminal justice in Manitoba, and is of sufficient public importance to justify an inquiry;

THEREFORE, the Attorney General recommends:

1. THAT the Honourable Peter de C. Cory be appointed to inquire into the conduct of the investigation into the death of Barbara Stoppel, and the circumstances surrounding the resulting criminal proceedings commenced against Thomas Sophonow for the murder of Barbara Stoppel.

2. THAT the Honourable Peter de C. Cory shall report his findings on these matters, including any findings respecting practices or systemic issues that may have contributed to or influenced the course of the investigation or resulting prosecution in this matter, and make such recommendations as he considers advisable relating to the current administration of criminal justice in the Province of Manitoba.

3. THAT the Honourable Peter de C. Cory shall perform his duties without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization, without interfering in any ongoing police investigation relating to the murder of Barbara Stoppel, or any ongoing criminal proceedings, and without permitting the inquiry to become a re-trial of Thomas Sophonow on the charge for which he was acquitted by the Court of Appeal.

4. THAT the Honourable Peter de C. Cory shall advise on whether, in the circumstances of this case, including the entry of a final verdict of acquittal by the courts, Thomas Sophonow is entitled to financial compensation because, amongst other factors, of his imprisonment while pending trial, appeals and re-trials for an offence he had not committed, and, if so, the basis for entitlement on the facts of this case.

5. THAT the Honourable Peter de C. Cory shall advise on the appropriate amount of financial compensation in the event that he determines that Thomas Sophonow is entitled to financial compensation on the facts of this case.

6. THAT the Honourable Peter de C. Cory shall complete this inquiry and deliver his final report containing his findings, conclusions and recommendations to the Attorney General by or before June 30, 2001 and may give the Attorney General such interim reports as he considers appropriate to address urgent matters in a timely fashion in a form appropriate for release to the public, which release will be subject to *The Freedom of Information and Protection of Privacy Act* and other relevant laws.

7. THAT to the extent that the Honourable Peter de C. Cory considers advisable, he may rely on any transcript or record of pretrial, trial or appeal proceedings before any court in relation to the proceedings and prosecution and on such other related materials as he considers relevant to his duties.

MANITOBA

Order in Council

No. 232 /200

On Matters of State

To The Honourable the Lieutenant Governor in Council

The undersigned, the Minister of .....
submits for approval of Council a report setting forth that:

WHEREAS

8. THAT all Departments, agencies and bodies established by the Legislature of Manitoba, including the Winnipeg Police Service, shall assist the Honourable Peter de C. Cory to the fullest extent permitted by law, so that he may be able to fully carry out his duties during this inquiry.

9. THAT from time to time on Certificate of the Attorney General, the Minister of Finance may pay from the Consolidated Fund:

   (a) travelling and other incidental expenses incurred by the Honourable Peter de C. Cory, in carrying out this inquiry;
   (b) fees and salaries of such advisors and assistants as may be employed or retained for the purposes of this inquiry;
   (c) reasonable legal fees that may be incurred from time to time to assist Thomas Sophonow and the Stoppel family during the Inquiry, should standing at the inquiry be granted to either or both, in an amount and under such terms as may be determined by the Deputy Attorney General in accordance with existing policies and practices of the Government of Manitoba, the accounts of which will be subject to taxation by a taxation or judicial officer appointed for the purpose by the Honourable Peter de C. Cory; and
   (d) such other operational expenditures as may be required to support the conduct of the inquiry.

10. THAT the appointment of the Honourable Peter de C. Cory be effective from the date this Order in Council is made.

Initiating Department/Agency
Department/Agency Authorized Officer
Approved by C.S.C. Finance
Approved as to form by: Name R. MACFARLANE Initials Civil Legal Services or Legislative Counsel:

Signature .....

IN THE EXECUTIVE COUNCIL CHAMBER, WINNIPEG

Upon consideration of the foregoing report and recommendation Council advises that it be done as recommended.

June 7, 2000
Date

.....
President or Presiding Member

AT GOVERNMENT HOUSE IN THE CITY OF WINNIPEG

Approved and Ordered this 7 **day of** June **A.D.** 2000

.....
Lieutenant Governor

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MANITOBA

Décret n° 232/2000

Affaires d'État

Je soussigné, procureur général, soumets à l'approbation du Conseil le rapport suivant :

Attendu :

que les articles 83 et 96 de la *Loi sur la preuve au Manitoba*, c. E150 de la *C.P.L.M.*, prévoient notamment ce qui suit :

« 83(1) Lorsque le lieutenant-gouverneur en conseil juge à propos de faire instituer une enquête sur toute affaire relevant de la compétence de la Législature et touchant ou ayant trait, selon le cas:

[...]

c) à l'administration de la justice dans la province;

[...]

f) à toute affaire qui, de son avis, est d'une importance publique suffisante pour justifier une enquête,

il peut, s'il n'est pas prévu d'enquête par ailleurs, nommer un ou plusieurs commissaires pour conduire l'enquête et en faire rapport.

« 96 Le lieutenant-gouverneur en conseil prend des dispositions, soit générales relativement à toutes les commissions qui sont délivrées et à toutes les enquêtes qui sont tenues sous le régime de la présente partie, soit spécifiques à leur égard, pour les affaires suivantes :

a) la rémunération des commissaires et des personnes qui sont engagées ou employées pour aider à l'enquête, y compris les témoins;

b) le paiement des frais accessoires et nécessaires;

c) les actes, les affaires et les choses qui sont nécessaires afin d'assurer l'application de toutes les dispositions de la présente partie »;

que Barbara Stoppel est décédée plusieurs jours après avoir été victime d'une agression et étranglée pendant la soirée du 23 décembre 1981;

qu'à la suite d'une enquête menée par le service de police de Winnipeg, Thomas Sophonow a été arrêté et accusé du meurtre le 12 mars 1982 et :

a) qu'un procès a eu lieu devant la Cour du Banc de la Reine le 18 octobre 1982, lequel a été déclaré nul étant donné que le jury n'a pu rendre un verdict unanime;

b) qu'un deuxième procès a eu lieu devant la Cour du Banc de la Reine le 21 février 1983, que Thomas Sophonow a alors été déclaré coupable de meurtre et que la Cour d'appel du Manitoba a ensuite cassé ce jugement le 13 mars 1984 et ordonné la tenue d'un nouveau procès, décision que la Cour suprême du Canada a confirmée le 10 décembre 1984;

c) qu'un troisième procès a eu lieu devant la Cour du Banc de la Reine le 4 février 1985, à la suite duquel Thomas Sophonow a, une seconde fois, été déclaré coupable de meurtre et que la Cour d'appel a de nouveau cassé ce jugement le 12 décembre 1985 et rendu un verdict d'acquittement pour le motif que la tenue d'un quatrième procès relativement à cette affaire n'était pas dans l'intérêt de la justice;

d) que la Cour suprême a refusé d'accorder l'autorisation d'interjeter appel devant elle le 22 avril 1986;

que pendant la période de 1998 à 2000 le service de police de Winnipeg a procédé à une nouvelle enquête sur les circonstances qui ont entraîné la mort de Barbara Stoppel;

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qu'en s'appuyant sur les résultats de cette enquête, le chef de police de Winnipeg se dit convaincu que Thomas Sophonow n'est nullement responsable de la mort de Barbara Stoppel et déclare que l'enquête se poursuit afin de découvrir le responsable;

que l'examen qu'ont effectué les procureurs de la Couronne du ministère de la Justice corrobore les résultats de la nouvelle enquête du service de police de Winnipeg;

que le procureur général du Manitoba accepte la conclusion du chef de police de Winnipeg;

que le procureur général est d'avis que le déroulement des événements a soulevé de nombreuses questions sur l'administration de la justice pénale au Manitoba et revêt suffisamment d'importance pour motiver la tenue d'une enquête,

le procureur général recommande :

1. QUE M. Peter de C. Cory soit chargé de procéder à une enquête sur la conduite de l'enquête relative au décès de Barbara Stoppel et sur les circonstances qui ont entouré la tenue des poursuites criminelles intentées contre Thomas Sophonow pour le meurtre de Barbara Stoppel.

2. QUE M. Peter de C. Cory fasse rapport de ses constatations sur cette affaire, y compris les conclusions concernant les pratiques ou les systèmes qui ont pu contribuer à la marche de l'enquête ou des poursuites subséquentes ou les influencer, et qu'il présente les recommandations qu'il estime utiles en ce qui a trait à l'administration de la justice pénale au Manitoba à l'heure actuelle.

3. QUE M. Peter de C. Cory s'acquitte de ses fonctions sans tirer de conclusions ni formuler de recommandations concernant la responsabilité civile ou pénale de particuliers ou d'organismes, sans entraver d'aucune manière les enquêtes policières en cours sur le meurtre de Barbara Stoppel, ni aucune poursuite criminelle en cours et sans permettre que l'enquête ne se transforme en un nouveau procès contre Thomas Sophonow pour l'accusation à l'égard de laquelle la Cour d'appel l'a acquitté.

4. QUE M. Peter de C. Cory donne son avis sur la question de savoir si, compte tenu des circonstances de cette affaire, y compris l'inscription d'un verdict d'acquittement par les tribunaux, Thomas Sophonow pourrait avoir droit à une compensation financière par suite, entre autres, de son emprisonnement pendant la période d'attente du procès, des appels et des procès subséquents pour une infraction qu'il n'avait pas commise et, le cas échéant, sur la base d'admissibilité fondée sur les faits connus de cette affaire.

5. QUE M. Peter de C. Cory donne son avis concernant le juste montant de la compensation financière dans l'éventualité où il établirait que Thomas Sophonow a droit à une compensation financière compte tenu des faits de cette affaire.

6. QUE M. Peter de C. Cory termine son enquête et présente son rapport final exposant ses constatations, ses conclusions et ses recommandations au procureur général au plus tard le 30 juin 2001 et soit autorisé à présenter au procureur général les rapports périodiques qu'il juge utiles pour aborder des questions urgentes de façon opportune dans une forme telle qu'ils puissent être communiqués au public, cette communication étant toutefois assujettie aux dispositions de la *Loi sur l'accès à l'information et la protection de la vie privée* et de toute autre loi pertinente.

7. QUE, dans la mesure où il le juge opportun, M. Peter de C. Cory soit autorisé à avoir recours aux transcriptions faites ou aux dossiers établis relativement aux mesures préparatoires au procès, au procès lui-même et à l'appel devant tout tribunal et ayant trait à l'instance ainsi qu'à toute autre question connexe qu'il estime relever de ses fonctions.

8. QUE tous les ministères et organismes établis par la Législature du Manitoba, y compris le service de police de Winnipeg, prêtent assistance à M. Peter de C. Cory dans la mesure permise par la loi de sorte qu'il lui soit possible de s'acquitter pleinement de ses fonctions pendant l'enquête.

PSF 40(FRANÇAIS) - 8940101367
1091 (Rév. 1996)

MANITOBA

Décret n° 232/2000

9. QUE, sur réception d'un certificat du procureur général, le ministre des Finances soit autorisé à payer, sur le Trésor :

a) les frais de déplacement et autres dépenses accessoires que M. Peter de C. Cory aura engagés au cours de la conduite de l'enquête;

b) les honoraires et les salaires des conseillers et des assistants qu'il aura engagés ou dont il aura retenu les services pour les besoins de l'enquête;

c) les honoraires d'avocat raisonnables engagés, le cas échéant, pour procurer de l'aide à Thomas Sophonow et à la famille Stoppel pendant l'enquête s'ils sont appelés à y comparaître, les montants accordés et les modalités de paiement étant déterminés par le sous-procureur général en conformité avec les politiques et les usages en vigueur du gouvernement du Manitoba et les comptes d'honoraires devant être liquidés par un liquidateur des dépens ou un fonctionnaire judiciaire nommé à cette fin par M. Peter de C. Cory;

d) les autres dépenses de fonctionnement nécessaires à la tenue de l'enquête.

10. QUE la nomination de M. Peter de C. Cory entre en vigueur à la date de la prise du présent décret.

Ministère / Organisme d'origine	
Ministère / Organisme	Fonctionnaire autorisé
Approuvé par C.F.P.	Finances
Approuvé quant à la forme par le Bureau du conseiller législatif : Nom Albert J. Pfeiffenberger	

Signature .....

Le Conseil exécutif, réuni dans sa salle des séances, à Winnipeg, est d'accord pour qu'il soit donné suite au rapport et à la recommandation ci-dessus.

Le président (ou son remplaçant),

7 juin 2000 .....
Date

Fait le 7 juin 2000

EN LA RÉSIDENCE DU LIEUTENANT-GOUVERNEUR, À WINNIPEG.

Le lieutenant-gouverneur,

141

PSF 40(FRANÇAIS) - 8940101387
1991 (Rév 1998)

Appendix B

Notices of Hearing

Subscribe to The Globe and Mail
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1-800-387-5400.

DATED at Toronto this 19th day of September, 2000.

Mandelbaum Spergel Inc.

505 Consumers Road, Suite 201, Toronto Ontario M2J 4W8
Tel: 416 497 1660 Fax: 416 494 7199

NOTICE OF HEARINGS

Re Commission of Inquiry into the Investigation of the Death of Barbara Stoppel and the Subsequent Prosecution and Conviction of Thomas Sophonow

To: All persons who wish to seek standing to appear at and participate in the above Inquiry

WHEREAS the Winnipeg Police Service reinvestigated the circumstances surrounding the death of Barbara Stoppel and the Chief of Police for the City of Winnipeg is now completely satisfied that Thomas Sophonow had no involvement in such death.

TAKE NOTICE that a Hearing will be held before The Honourable Peter DeC. Cory, Inquiry Commissioner appointed pursuant to Order-in-Council of the Province of Manitoba, on Monday, October 2, 2000 at 9:30 a.m. at 373 Broadway Avenue, 3rd Floor in the City of Winnipeg, in the Province of Manitoba, to hear recommendations as to those parties who should be granted standing at the Hearings of the Inquiry and to discuss and determine the manner in which the proceedings at the Hearings of the Inquiry will be conducted.

AND TAKE NOTICE that the Hearings of the Inquiry with regard to the issue of the entitlement of Thomas Sophonow to compensation will commence on Tuesday, November 7, 2000 at 373 Broadway Avenue, 3rd Floor in the City of Winnipeg, in the Province of Manitoba and continue for the rest of that week, the week of November 13, 2000 and the weeks of December 11 and December 18, 2000 or so long as it is necessary to deal with the issue of compensation.

The Hearings with respect to the other aspects of the Inquiry will continue on the earliest possible date in the year 2001.

ANY PERSON who wishes to make an application for standing should appear on Monday, October 2, 2000 at 9:30 a.m. at the above-noted place and should give notice of such intention on or before September 27, 2000 to Commission Counsel:

Richard J. Wolson, Q.C.
Gindin Wolson Simmonds
1200-363 Broadway
Winnipeg, Manitoba
[illegible]
Telephone: (204) 985-8184
Facsimile: (204) 985-8190

OR

Marilyn M.M. Field-Marsham
Osler, Hoskin & Harcourt LLP
P.O. Box 50
First Canadian Place
Toronto, ON M5X 1B8
Telephone: (416) 862-6505
Facsimile: (416) 862-6666

Peter DeC. Cory
Inquiry Commissioner

AIR CANADA | [illegible] | ANA

Winnipeg Free Press
TUESDAY, SEPTEMBER 19, 2000

Legals

NOTICE OF HEARINGS

Re: Commission of Inquiry into the Investigation of the Death of Barbara Stoppel and the Subsequent Prosecution and Conviction of Thomas Sophonow

TO: All persons who wish to seek standing to appear at and participate in the above Inquiry

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1200-363 Broadway
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R3C 3N9
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Facsimile: (204) 985-8190

or

Marilyn M.M. Field-Marsham
Osler, Hoskin & Harcourt LLP
P.O. Box 50
First Canadian Place
Toronto, ON M5X 1B8
Telephone: (416) 862-6505
Facsimile: (416) 862-6666

Peter DeC. Cory
Inquiry Commissioner

Appendix C

Rules of Practice and Procedure

Commission of Inquiry into the Investigation of the Death of Barbara Stoppel and the Subsequent Prosecution and Conviction of Thomas Sophonow

RULES OF PRACTICE AND PROCEDURE

Hearings

On dates to be determined by the Commissioner, including November 7 – 10, 2000, the week of November 13th, 2000, the weeks of December 11th and 18th, 2000, the weeks of January 15 and January 22, 2001, and continuing thereafter on March 12, 2001, the Commission will hold public hearings at 373 Broadway Avenue in the City of Winnipeg, in the Province of Manitoba, or at such other place as it directs. Hearings will generally commence at 9:30 a.m. and conclude at 5:00 p.m. or later if required, with a break for lunch between 1:00 p.m. and 2:30 p.m.

The Commission is committed to a process of public hearings. The Commissioner may, in his discretion, in appropriate circumstances, conduct hearings in camera where he is of the opinion that matters involving public security may be disclosed, or if considering intimate financial, personal, or other matters that are of such a nature, having regard to the circumstances, the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that the hearings should be open to the public. More particularly, in his discretion, the Commissioner may conduct hearings in camera where he is of the opinion that the matters are so sensitive that they may interfere with the ongoing police investigation.

Further, the Commissioner may, in appropriate circumstances, direct that measures be taken to minimize the adverse affects of publicity and publication and to protect individual rights, including refusing permission to televise certain portions of the proceedings. Where the Commissioner decides to conduct hearings in camera, he will determine who will be permitted to attend the in camera hearings, and what conditions will be imposed upon anyone in attendance.

Preparation of Evidence

Parties should at the earliest opportunity, and by October 17, 2000 in respect of the aspect of the hearings that relate to compensation issues, provide to Commission Counsel the names and addresses of all witnesses who they consider may have information relevant to the Inquiry, together with copies of all relevant documentation which is not already part of the public record.

In addition, at the earliest opportunity, and by October 17, 2000 in respect of the aspect of the hearings dealing with compensation issues, parties shall provide Commission Counsel with "will says" of any witnesses whom they intend to call and with any documents which they intend to file as exhibits or to which they intend to otherwise refer during the hearings, and in any event no later than 2 business days prior to the day that the witness will be called or the document will be referred to or filed.

Production of documents emanating from the original police investigation will be made by the 4th of December, 2000. If any of these documents are considered to be relevant to and sensitive in the present ongoing investigation they may be edited to delete the sensitive portions. However, the original documents may be reviewed by counsel provided that an undertaking as to confidentiality is given.

All documents are to be produced by the parties by the 15th of January, 2001.

Commission Counsel may receive or examine documents subject to such confidentiality as they in their discretion may determine is consistent with the rules of natural justice and the provisions of Order in Council 232/2000.

Commission Counsel will provide reasonable access to any documents not already part of the public record which they intend to file as evidence before the Commission.

Witness Interviews

Any prospective witness interviewed by or on behalf of Commission Counsel is entitled to have his or her own counsel present.

The Evidence

The Order in Council provides that the Commission may rely on any transcripts or record of pre-trial, trial or appeal proceedings before any Court in relation to the proceedings and prosecution and on such other related materials as the Commission considers relevant to its duties. At the commencement of the public hearings, a list of the documents to which the Commission may refer at any time without further notice will be filed.

Witnesses will give evidence under oath or affirmation.

Counsel may adduce evidence both by way of leading and non-leading questions.

All evidence will be presented by Commission Counsel except with leave of the Commissioner as hereinafter provided.

Except as otherwise directed, the order of examination for witnesses will be as follows:

(a) Parties who have standing and are represented by Counsel may be examined by their own counsel.

(b) Subject to limitations arising out of the nature of their standing, other parties will then have an opportunity to examine the witness. Subject to further direction of the Commissioner, the order of examination will generally be as follows:

+ Counsel with a substantial commonality of interest will examine next,

+ Remaining counsel will examine next,

+ Counsel for the witness will then re-examine,

+ The Commissioner, or on his direction, Commission Counsel may then pose questions. Thereafter, any counsel may examine the witnesses on issues arising from questions posed by or on behalf of the Commissioner.

Commission Counsel have the discretion to decline to call any witnesses whose evidence would not appear to them to be relevant or to be within a subject area to be covered by other witnesses or where the evidence of the witness appears in a transcript filed at the inquiry. If, at the end of the phase of evidence, there are witnesses who parties believe should be heard from, parties may request and the Commissioner may direct that Commission Counsel call them as witnesses.

Notices before Possible Findings of Misconduct

Notices will be delivered by the Commission after information about alleged misconduct has come to the Commission's attention which may give rise to findings of misconduct. These will be delivered on a confidential basis to the persons or parties to whom they relate. Supplementary notices may be delivered from time to time by the Commission as warranted by the information before it. Notices may be issued to persons who are not called as witnesses before the Commission.

At a specified phase of the Inquiry to be determined by the Commission, if any party believes that it is necessary to adduce documentary evidence or to call evidence to respond to allegations of possible misconduct for which a Notice has been received, then that party may apply for leave to call that evidence or may request that Commission Counsel call such evidence. If relevant and responsive to issues raised in the Notice, leave will be given. Cross-examination of the witness by counsel for other parties shall be limited to matters adduced in evidence during the examination in chief of the witness except with leave of the Commissioner.

General Provisions

The use of the term "party" is intended to refer to those granted standing and is not intended to convey notions of an adversarial context.

The Commission is entitled to receive evidence which might otherwise be inadmissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence.

Nothing is admissible in evidence that would be inadmissible in a court by reason of any privilege under the law of evidence.

Witnesses may be called more than once in the discretion of the Commissioner.

Counsel shall produce originals of relevant documents to Commission Counsel upon request.

Attendance of Witnesses

Where the Commission requires the attendance of any witness either on its own motion or as a result of any application, a subpoena or summons may be sent to the witness.

Witnesses may request that the Commission hear their evidence pursuant to a subpoena or summons in which event a summons shall be issued to them.

The Commission may require any person by subpoena or summons:

(a) to give evidence on oath or affirmation at the inquiry; or

(b) to produce in evidence at the inquiry such documents and things as the Commission may specify relevant to the subject matter of the inquiry and not inadmissible in a court, by reason of any privilege under the law of evidence.

Submissions by Counsel

When all the evidence has been adduced at the inquiry, Commission Counsel and other parties shall have the right to address the Commission as the Commissioner directs. The Commissioner may direct that written submissions be made by counsel in addition to their oral submissions.

Access to Evidence in the Hearing

All evidence shall be classified as public or private. Evidence from the hearings in camera will be classified and marked "C".

One copy of the transcript of the evidence, when available, and a list of the exhibits of the public hearings, will be available for the use of counsel for the parties at 373 Broadway Avenue in the City of Winnipeg, in the Province of Manitoba. A disk version of the transcript or an additional copy may be ordered by any one prepared to pay its costs.

Amendments

These rules may be amended from time to time by the Commission.

Appendix D

Curriculum Vitae of Peter Neufeld

COCHRAN NEUFELD & SCHECK, LLP
99 Hudson Street
New York, New York 10013

Tel: 917-237-0338
Fax: 212-965-9084

Johnnie L. Cochran
Peter J. Neufeld
Barry C. Scheck

Nick Brustin

PETER NEUFELD
Curriculum Vitae

Peter Neufeld co-founded and directs "The Innocence Project," at the Benjamin N. Cardozo School of Law which currently represents more than two- hundred inmates seeking post-conviction release through DNA testing. In its nine years of existence, The Innocence Project has been responsible in whole or in part for exonerating more than fifty of the eighty-seven men to be cleared through post-conviction DNA testing. In February 2000, *Actual Innocence: Five Days to Execution, and Other Dispatches From the Wrongly Convicted*, written by Barry Scheck, Pulitzer Prize-winning columnist Jim Dwyer, and Peter was published by Doubleday. The Signet paperback edition was published by Penguin Putnam in March, 2001. This non-fiction book grew out of the cases and stories of the Innocence Project.

Peter, in addition to his teaching responsibilities, is a partner in the law firm Cochran, Neufeld & Scheck LLP, specializing in civil rights and constitutional litigation. He has litigated and taught extensively in both the "hard" and behavioral forensic sciences. His trials frequently redefine and expand the parameters of forensic psychiatry, laboratory science, and civil rights. Most of his work is pro bono and of public interest. His cases often result in enhancing public awareness of systemic problems, improving the criminal justice system, and legislative reform.

He is frequently retained by victims of police brutality, pursuing civil rights claims in the courts, and seeking systemic change. Among these cases, he, along with co-counsel, currently represents: Abner Louima, the Haitian-American tortured by cops in a precinct bathroom; two of four young black and Latino athletes racially profiled and wounded by New Jersey state troopers; and Thomas Pizzuto, who was beaten to death by corrections officers in Nassau Country Jail. When not acting as primary counsel, Peter has provided pro bono services to dozens of lawyers representing the accused in death penalty cases.

Peter has secured acquittals and non-custodial dispositions in several cases on behalf of abused women charged with killing their batterers.

Peter is co-chair of the National Association of Criminal Defense Lawyers DNA Task Force. In 1995, he was appointed by the Governor and continues to serve on the New York State Commission on Forensic Science, with responsibility for regulating all state and local crime laboratories.

A 1972 graduate of the University of Wisconsin, Peter Neufeld received his law degree in 1975 from New York University School of Law.

PUBLICATIONS ON FORENSIC SCIENCE, EXPERTS, AND TRIAL ADVOCACY

"Admissibility of New or Novel Scientific Evidence in Criminal Cases." DNA Technology and Forensic Science, 32 Banbury Report, 1989.

P.J. Neufeld and B.C. Scheck. "Factors Affecting the Fallibility of DNA Profiling: Is There Less Than Meets the Eye?" *Expert Evidence Reporter*, December, 1989, Vol. 1, No. 4.

P.J. Neufeld and N. Colman. "When Science Takes the Witness Stand," *Scientific American*, May, 1990, Vol. 262, No. 5.

"Have You No Sense of Decency?" *The Journal of Criminal Law and Criminology*, Vol. 84, No. 1, Spring 1993.

P.J. Neufeld and B.C. Scheck, Forward to "DNA Exculpatory Cases Study Report," National Institute of Justice, 1996.

Barry Scheck, Peter Neufeld, Jim Dwyer, *Actual Innocence: Five Days to Execution, And Other Dispatches From the Wrongly Convicted*, Doubleday, February, 2000.

Barry Scheck, Peter Neufeld, Jim Dwyer, *Freeing the Innocent*, excerpted from *Actual Innocence*, The Champion, March 2000.

Barry Scheck and Peter Neufeld, "DNA and Innocence Scholarship," in *Wrongly Convicted: Perspectives on Failed Justice*, Rutgers University Press, Saundra Westervelt and John Humphrey, Eds., due early 2001.

"Legal and Ethical Implications of Post-Conviction DNA Exonerations," *New England Law Review*, Vol.35, No. 1, due 2001.

Appendix E

Curriculum Vitae of Dr. Elizabeth Loftus

VITA

ELIZABETH F. LOFTUS

PERSONAL DATA

Address: Department of Psychology
University of Washington
Box 351525
Seattle, Washington 98195

(206)543-7184 (tel)
(206)543-2640 (messages)
(206)685-3157 (fax)
email: eloftus@u.washington.edu
WWW: http://faculty.washington.edu/eloftus

EDUCATION

B.A., with highest honors in Mathematics and Psychology, UCLA, 1966
M.A., Psychology, Stanford University, 1967
Ph.D., Psychology, Stanford University, 1970

TEACHING EXPERIENCE

Permanent

Assistant, Associate, Full Professor, University of Washington, 1973-present
Adjunct Professor of Law, University of Washington, 1984-present
Assistant Professor, New School for Social Research, Graduate Faculty, 1970-73

Visiting

Harvard University, Seminar on Law and Psychology, 1975-76
National Judicial College, University of Nevada, 1975-87 (summers)
Visiting Professor, Georgetown University Law Center, 1986

HONORS AND AWARDS

Honorary Degrees

Doctor of Science, Miami University (Ohio), 1982
Doctorate Honoris Causa, Leiden University, The Netherlands, 1990
Doctor of Laws, John Jay College of Criminal Justice, 1994
Doctor of Science, University of Portsmouth, England, 1998

Honor Societies

Phi Beta Kappa, elected 1965
Pi Mu Epsilon, National Mathematics Honorary, elected 1965
Mortar Board, National Senior Women's Honorary, elected 1965

Fellowships

Office of Education Traineeship, Stanford University, 1966-69
National Institute of Mental Health Fellowship, Stanford University, 1969-70
American Council on Education Fellowship in Academic Administration, Harvard University, 1975-76
Fellow, Center for Advanced Study in the Behavioral Sciences, Stanford, 1978-79

Grants and Contracts

National Institute of Mental Health, 1971-72; 1972-73; 1976-79 (Human Memory)
Department of Transportation, 1974-76 (Human Memory)
General Services Administration, 1974-75 (Communications--w/Keating)
National Bureau of Standards, 1976-77; 1980-82 (Communications--w/Keating)
National Science Foundation, 1978-85 (Human Memory)
National Science Foundation, 1980-83 (Jury Behavior--w/Severance)
National Science Foundation, 1983-85; (Hypnosis--w/Greene)
National Institute of Mental Health, 1984-86; 1986-89;1989-92 (Memory)
National Center for Health Services Research, 1986-88 (Survey Memory)
National Science Foundation, 1986-88; 1988-91 (Jury Comprehension--w/Greene-Goodman)
Fund for Research on Dispute Resolution, 1989-91 (Predictions of Success--w/Goodman)
National Institute of Health, 1991-95 (Cognition & Health--w/Croyle)
National Institute of Health, 1993-94 (Health/sex memory: subcontract from UCSF/Catania)
The Leverhulme Trust, Postevent info and erasing memories, 1997- 2000 (w/ Dan Wright, University of Bristol)

Miscellaneous

National Lecturer of Sigma Xi, 1978-80
American Psychological Association nomination for the NSF Waterman Award for Outstanding Contributions to Science, 1977 and 1978
Listed in Who's Who of American Women, World Who's Who of Women, and various others
National Media Award for Eyewitness Testimony (American Psychological Foundation, Distinguished Contribution, 1980)
Greyhound Research Award, 1987-88
Honorary Fellow, British Psychological Society, 1991
Committee for the Scientific Investigation of Claims of the Paranormal (CSICOP): "In Praise of Reason" Award, 1994
George E. Allen Professor, University of Richmond School of Law, 1995
American Academy of Forensic Psychology, Distinguished Contributions to Forensic Psychology Award, 1995.
American Association of Applied and Preventive Psychology (AAAPP), Distinguished Contribution to Basic and Applied Scientific Psychology Award, 1996.
American Psychological Society, James McKeen Cattell Fellow ("for a career of significant intellectual contributions to the science of psychology in the area of applied psychological research"), 1997.
Sexual Sanity Award, Sexual Intelligence, 2001.
Oklahoma Scholar Leadership Enrichment Program Scholar 2001.
William James Fellow Award, American Psychological Society, 2001 (for "ingeniously and rigorously designed research studies...that yielded clear objective evidence on difficult and controversial questions.")

PROFESSIONAL MEMBERSHIPS

Current:

American Psychological Society, 1988- (Advisory Board, 1988; Board of Directors, 1991-1995; Board of Directors, 1997-2000; President, 1998-1999)
Western Psychological Association (President, 1984)
Psychonomic Society (Governing Board, 1990-1995)
Society of Experimental Psychologists, (1990 -)
British Psychological Society (1991, Lifetime Member)

Society for Applied Research in Memory & Cognition. (SARMAC)

Past:

American Psychological Association (Fellow-Div. 3, 35, 41; President, American Psychology-Law Society, Div. 41, 1985; President, Experimental Psychology Division, Div. 3, 1988) (1973-1996)

Institute for the Study of the Trial (Board of Directors, 1979-81)

Law and Society Association (1982-89)

OTHER PROFESSIONAL EXPERIENCE

Member, Psychology Education Review Committee, National Inst. of Mental Health, 1977-79

Associate Editor, American Psychologist, 1990-1994

Member, Editorial Board:

Journal of Experimental Psychology, 1974-87
Law and Human Behavior, 1980-
Human Learning, 1980-86
Social Cognition, 1981-92
Law and Society Review, 1982-86
Information and Behavior, 1983-1990
American Journal of Psychology, 1989-
Justice Quarterly, 1984-1995
Victimology, 1984-1995
Behavioral Sciences and the Law, 1985-99
Applied Cognitive Psychology, 1987-1993
(Special Editorial Advisor, 1993-2001)
Forensic Reports, 1987-1992
Ethics and Behavior, 1989-91
Psychology, Crime and Law, 1992-
The Forensic Echo, 1998-
Psychological Science in the Public Interest, 1999 -

Member, Advisory Board, British Journal of Psychology, 1983-

Psychology Today Magazine, Advisory Board, 1999-

Member, Council for Scientific Medicine, Scientific Review of Alternative Medicine, 1998-

American Psychological Association committee work:

Member, Communications Committee, 1975-76; Member, Magazine Task Force, 1975-76; Member, Finance Committee, 1976-78; Member, Comm. on Organization of APA, 1977-78; Commission on Organization, 1978-82; Council of Representatives, Div. 3, 1982-85; Executive Committee, Div. 41, 1981-85; Member, Ethics Committee, 1984; National Policy Studies Oversight Committee, 1986; Psychology Today, Board of Directors, 1987-88; Comm. on Division/APA Relations (CODAPAR), 1988-89, Public Information Comm. 1989-1992. Task Force on Recovered Memories of Child Sexual Abuse, 1993-1996.

Association for Advancement of Psychology (AAP), Board of Trustees, 1981-85

Federation of Behavioral, Psychological, and Cognitive Sciences:

Executive Committee, 1992-95.

National Academy of Sciences committee work:

Committee on ELF Radiation, 1976-77
Committee on Basic Research in the Behavioral and Social Sciences, 1980-82
Committee on Use of Statistical Evidence in Court, 1982-85
Committee on Cognitive Aspects of Survey Methodology, 1982-83

Social Sciences Research Council:

Committee on Cognition and Surveys, 1985-90

Bureau of National Affairs, Advisory Committee on Complex Litigation, 1987-1990

Representative from University Faculty to State Legislature, 1976-78

Advisory Comm., Institute of Government and Public Affairs, Univ. of Illinois, 1987-1992

FMS Foundation Advisory Board, 1992-

NIMH Behavioral Sciences Task Force. 1993

Sage Series on Counseling Women, Advisor, 1995-

Exploratorium, San Francisco's Science Museum, Advisor, 1990-1991, 1996-1998

Brain.com Corporation, Scientific Advisory Board, 1999-2001
Center on Wrongful Convictions, National Advisory Board, 2000- .

GOVERNMENT AND OTHER CONSULTING

General Services Administration, 1974-77
Federal Trade Commission, 1976-77
Bay Area Rapid Transit, San Francisco, 1979
Department of Justice (National Crime Survey), 1980
Consultant for attorneys and other members of the legal profession in 34 US states, Canada, South Korea, Israel, Sweden, Japan, The Netherlands, Ireland.
Law Reform Commission of Canada, 1981
Westin Hotels, AT&T, Schering-Plough, L.A. Gear, and other corporations
Internal Revenue Service, 1984
National Center for Health Statistics, 1985
US Secret Service, 1986
Unified Court System, NY., 1989-90

PUBLICATIONS

Books

Mednick, S.A., Pollio, R. H. & Loftus, E.F. (1973). Learning. Englewood Cliffs, NJ: Prentice-Hall.
-Japanese edition published by Iwanami Shoten Publishers, Tokyo.
Loftus, G.R. & Loftus, E.F. (1976) Human Memory: The Processing of Information. Hillsdale, NJ: Erlbaum Associates.
-Japanese edition published by University of Tokyo Press.
Bourne, L.E., Dominowski, R. L., & Loftus, E.F. (1979). Cognitive Processes. Englewood Cliffs, NJ: Prentice-Hall.
Loftus, E.F. (1979). Eyewitness testimony. Cambridge, MA: Harvard University Press.(National Media Award, Distinguished Contribution, 1980).
-Japanese edition published by Seishin Shobo, Tokyo.
Loftus, E.F. (1980). Memory. Reading, MA: Addison-Wesley. (Reprinted by NY: Ardsley Press 1988).
-Swedish edition published by Liber Forlag, Stockholm.
-Hebrew edition, Or Am, Tel-Aviv.
-French edition, Le Jour, Editeur.
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Garry, M., Manning, C., Loftus, E.F., & Sherman, S.J. (1996) Imagination Inflation: Imagining a childhood event inflates confidence that it occurred. Psychonomic Bulletin and Review, 3, 208- 214.
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Manning, C.G. & Loftus,E.F. (1996) Eyewitness testimony and memory distortion. Japanese Psychological Research, 38,5-13 (Invited Paper)
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Manning, C.G. & Loftus, E.F. (1996) Memory. McGraw-Hill 1997 Yearbook of Science & Technology. NY: McGraw-Hill., p. 299-301.
Clark, S.E. & Loftus, E.F. (1996) The construction of space alien abduction memories. Psychological Inquiry, 7, 140-143.
Loftus, E. F., & Doyle, J. M. (1996). Eyewitness Testimony: Civil and Criminal. 1996 Cumulative Supplement. Charlottesville, VA: Michie Company, 1-49.

Mazzoni, G. A. L., & Loftus, E. F. (1996). When dreams become reality. Consciousness & Cognition, 5, 442-462.

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1997

Hyman, I. & Loftus, E.F. (1997) Some people recover memories of childhood trauma that never really happened. In Paul S. Appelbaum, Lisa A. Uyehara, Mark R. Elin (Eds) Trauma and Memory: Clinical and Legal Controversies. NY: Oxford University Press. p. 3-24.

Garry, M., Loftus, E. F., DuBreuil, S. C., & Brown, S. W. (1997) Womb with a view: Memory beliefs and memory-work experiences. In D. G. Payne & F. G. Conrad (Eds.) Intersections in Basic & Applied Memory Research. Mahwah, NJ: Lawrence Erlbaum Associates, p. 233-255.

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Joslyn, S., Carlin, L., & Loftus, E. F. (1997) Remembering and forgetting childhood sexual abuse. Memory, 5, 703-724.

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Loftus, E.F. (1997). Creating childhood memories. Applied Cognitive Psychology, 11, S75-S86.

1998

Loftus, E.F., Nucci, M., & Hoffman, H. (1998) Manufacturing memory. American Journal of Forensic Psychology, 16, 63-75.

Ceci, S. J., Bruck, M., & Loftus, E. F. (1998) On the ethics of memory implantation research. Applied Cognitive Psychology, 12, 230-240.

Greene, E. & Loftus, E.F. (1998) Psycholegal research on jury damage awards. Current Directions in Psychological Science, 7, 50-54.

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Loftus, E.F. (1998) The price of bad memories. Skeptical Inquirer, 22, 23-24.

Na, Eun-Young & Loftus, E.F. (1998) Attitudes towards law and prisoners, conservative authoritarianism, attribution, and internal-external locus of control: Korean and American law students and undergraduates. Journal of Cross Cultural Psychology, 29, 595-615.

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Loftus, E.F. & Mazzoni, G.A.L. (1998) Using imagination and personalized suggestion to change people. Behavior Therapy, 29, 691-706.

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Wright D. B. & Loftus, E. F. (1998). How misinformation alters memories. Journal of Experimental Child Psychology, 71, 155-164.

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Billings, F.J. & Loftus, E.F. (1998) Havikuach al hazikaron hamudchak: Mishpatim umechkarim chadashim (The repressed memory controversy: recent court cases and recent research). Psychologia, 7, 24-32 (in Hebrew).

Hyman, I.E. Jr & Loftus, E.F. (1998) Errors in autobiographical memory. Clinical Psychology Review, 18, 933-947.

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Ornstein, P.A., Ceci, S.J., & Loftus, E.F. (1998) Adult recollections of childhood abuse: Cognitive and Developmental Perspectives. Psychology, Public Policy, and Law, 4, 1025-1051. (See also other commentaries by Ornstein, Ceci, & Loftus in the same issue.)

1999

Feldman, J.J., Miyamoto, J., & Loftus, E.F. (1999) Are actions regretted more than inactions? Organizational Behavior and Human Decision Processes, 78, 232-255.

Wright, D.B. & Loftus, E.F. (1999) Measuring dissociation: Comparison of alternative forms of the dissociative experiences scale. American Journal of Psychology, 112, 497-519.

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Paddock, J.R., Noel, M., Terranova, S., Eber, H.W., Manning, C., & Loftus, E.F. (1999). Imagination inflation and the perils of guided visualization. Journal of Psychology, 133, 581-595.

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2000

Busey, T.A., Tunnicliff, J., Loftus, G.R., & Loftus, E.F. (2000) Accounts of the confidence-accuracy relation in recognition memory. Psychonomic Bulletin and Review, 7, 26-48.

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Calvin, W. H. & Loftus, E.F. (2000, April) The poet as brain mechanic: A 2050 version of physics for poets. Global Business Network Bulletin, p.1-5.

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Loftus, E.F. (2000) The most dangerous book. Psychology Today, 33, p 32-35, 84

2001 and in press

Mazzoni, G.A.L., Loftus, E.F., Kirsch, I. (2001) Changing beliefs about implausible autobiographical events. Journal of Experimental Psychology: Applied, 7, 51-59.

Wright, D.B., Loftus, E.F. & Hall, M. (2001) Now you see it; Now you don't; Inhibiting recall and recognition of scenes. Applied Cognitive Psychology, 14, .

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Castelle, G. & Loftus, E.F. (2001) Misinformation and wrongful convictions. In S.D. Westervelt. (Ed.) Wrongly Convicted: When Justice Falls: Rutgers University Press

Hoffman, H., Granhag, P.A., See, S.K. & Loftus, E.F. (in press). Social influences on reality monitoring decisions. Memory & Cognition.

Joslyn, S., & Loftus, E.F. , McNoughton, A., & Powers, J. (in press) Memory for memory. Memory and Cognition.

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Hyman, I.E., & Loftus, E.F. (in press) False childhood memories and Eyewitness Memory Errors. In M. Eisen, G. Goodman, J. Quas (Eds). Memory and Suggestibility in the Forensic Interview. Mahwah, NJ: Erlbaum Associates.

Garry, M., Rader, M., & Loftus, E.F. (in press) Classic and contemporary studies on the impact of misleading information. In Itsukushima, Y. (Ed.) Psychology of Eyewitness Testimony in Japan.

Loftus, E.F. (2001) Imagination and its memory-making power. The Psychologist.

Loftus, E.F. (in press) The dangers of memory. In Sternberg, R. J. (Ed) Psychologists Defying the Crowd.

Davis, D., Loftus, E.F., & Follette, W.C. (in press) Informed consent for recovered memory therapy: How, when, and whether to warn. Journal of American Academy of Psychiatry and the Law.

Loftus, E.F. (2002) False memory. Nadel, L. (Ed). Encyclopedia of Cognitive Science. Nature Publishing Group.

INVITED ADDRESSES

1969
Civil Service Commission for the Education Program in Systematic Analysis, Washington, DC

1972
Conference on Formal Aspects of the Cognitive Process, University of Michigan
Eastern Verbal Investigator's League (EVIL), New York

1973
Johns Hopkins University
Harvard University
Columbia University
University of Colorado
Conference on Cognition, Perception, and Adaptation, University of Minnesota
Bell Laboratories
Perception Consortium of New York

1974
University of Oregon
University of Kansas
Washington Defense Counsel, Seattle

1975
University of Lethbridge
Kansas State University
Evergreen State College
University of Wisconsin, Madison
Lawrence University
Harvard University
New School for Social Research
Washington State Trial Lawyers Association, Vancouver
Massachusetts Defenders Committee, Boston
Harvard Law School

1976
Ohio State University
University of Pittsburgh
University of Massachusetts, Boston
University of Toronto
McMaster University
Wheaton College
University of Utah
Brandeis University
Oklahoma State University
State University of New York, Buffalo
Association of Trial Lawyers of America (ATLA)
National College of Advocacy, Reno/Boston

United States Attorneys, Seattle
Oklahoma County Bar Association, Oklahoma City
Connecticut Trial Lawyers Association, Hartford
Judge Advocate General's School, Charlottesville, Virginia
Law Society of Upper Canada, Toronto
Florida Bar Association, Tampa and Miami
Bolt, Beranek & Newman, Cambridge
Colloquium on New Ways of Analyzing Variation in English, Georgetown University
Defense Advanced Research Projects Agency, New York

1977
University of Western Ontario
Bowling Green State University
Simon Fraser University
ATLA, Fifth Circuit Seminar, New Orleans
New York State Bar Association, New York
Washington State Patrol, Shelton, Washington
Criminal Justice Training Commission Seminar, Issaquah, Washington; Seattle
Advocacy Education Seminar, Burlington, Vermont
ATLA, National College of Advocacy, Reno
ATLA, National Convention, Washington, DC
Oregon Criminal Defense Association, Seaside
ATLA, First Circuit Seminar, Boston

1978
Kearney State College, Nebraska
University of Michigan
University of Minnesota
Stanford University
University of California, San Diego
North Carolina Academy of Trial Lawyers, Charlotte
Washington State Bar Association, Continuing Legal Education, Olympia
ATLA, Mid-Winter Meeting, Monte Carlo, Monaco
29th Annual Advocacy Institute, University of Michigan
National Institute of Trial Advocacy (NITA), NW Regional, University of Oregon
Federation of Law Societies of Canada, Criminal Evidence Program, Toronto
Louisiana Trial Lawyers Association, New Orleans
ATLA Seminar on Trial Tactics, Camp Pendleton, California
American Judges Association Annual Meeting
SAFECO Insurance Company Continuing Education Program
Law and Society Association, University of Minnesota

1979
California State University, Chico
Carnegie-Mellon University
Yale University (one week)
Duke University
University of California, Santa Barbara
California State University, Fullerton
University of California, Berkeley

State University of New York, Stony Brook
Hope College
University of Nebraska, Omaha
Canadian Bar Association, Vancouver
Pennsylvania Trial Lawyers Association, Philadelphia, Pittsburgh
Montana Trial Lawyers Association, Butte
West Virginia Trial Lawyers Association, Charleston
National College of Advocacy, Hastings Law School
Public Defender Office, Santa Clara County, California
Nebraska Association of Trial Attorneys
Standard Oil (AMOCO Research Center), Chicago
Montsanto, St. Louis
New York Academy of Sciences
Conference on Memory and Amnesia, Lebanon, NH
Conference on Developmental and Experimental Approaches to Human Memory
University of Michigan

1980
University of Victoria
Hamilton College
McGill University
Sam Houston State University
Trent University (Canada)
University of Toronto
Washington State University
Idaho State University
University of California, Riverside
Oklahoma State University
University of Missouri, Columbia (3 days)
University of Wisconsin, La Crosse
Nova Scotia Barrister's Society, Dalhousie Law School, Halifax
University of British Columbia Law School, Vancouver
California Public Defenders Assn., Asilomar
Tennessee Trial Lawyers Assn., Nashville
Kansas District Judges Assn.
Kansas Bar Assn.
Hastings Law School
Washington DC Public Defender's Office
Memphis State Trial Lawyers
American Bar Assn./ATLA Seminar, Las Vegas
Maryland Trial Lawyers Annual Meeting, Ocean City
New York Bar Assn. Advocacy Course, New York City
Hoffmann-LaRoche, Nutley, NJ
American Institutes of Research, Washington, DC
Canadian Psychological Assn. Annual Meeting, Calgary
Attention and Performance, IX, Cambridge, England
Council for Advancement of Science Writing, Durham

1981
University of South Florida
Northwestern University, Business School

Stanford University
University of Texas, El Paso
Claremont Graduate School
University of Illinois
Copenhagen University
University of Stockholm
Federal Defenders Annual Meeting, San Diego
Oregon Trial Lawyers, Portland
California Attorneys for Criminal Justice
Hastings Law School, San Francisco
ABA/ATLA Seminar, Las Vegas
Northwestern Law School, Chicago
Inner Circle of Advocates, Sun Valley
Annual Institute, Georgetown Univ. Law Center, Washington, DC
Professional Institutes Seminar, Puerto Rico
National College of Juvenile Justice, San Francisco
S.S.R.C. Conference on Law and Psychology, Oxford, England
Chaucer Club, MRC Applied Psychology Unit, Cambridge, England
British Psychological Society, Guildford, England
American Telephone and Telegraph--Corporate Security
Chautauqua Institution, Science Week
G. Stanley Hall Lecture, APA

1982
Rice University
Texas A&M
University of Texas, Austin
Union College
SUNY, Plattsburgh
University of Texas, Arlington
James Madison University
University of Virginia
University of Colorado (3 days)
Miami University (Ohio)
Canadian Bar Assn., Alberta Branch, Calgary
Washington State Judges, Yakima
McGeorge School of Law (High Table)
Oklahoma County Bar
Northwestern Law School
Harvard Law School
Georgetown Law School
Indiana Trial Lawyers Assn.
West Palm Beach County Bar
Eastern Psychological Assn., Baltimore
Clover Park Administrators

1983
University of Cincinnati
UCLA
Reed College
San Diego State University

Ohio State University
University of Houston
Eastern Washington University
Nebraska Wesleyan University (Psychology Fair Speaker)
University of Denver
Am. Assoc. of Law Schools, Cincinnati
Oregon Trial Lawyers Assn.
Northwestern Law School
Atlanta Bar Assn. Seminar
Washington Assn. of Technical Accident Investigators (WATAI)
Arizona Prosecuting Attorneys Advisory Council, Phoenix
Academy of Florida Trial Lawyers, Miami
Medical Disciplinary Board, State of Washington
The Royal Society, London
American Psychological Assn. Meeting, Anaheim
Max Planck Institute, West Berlin
American Society of Criminology, Denver
Merrill Lynch, Palm Springs

1984
University of British Columbia
University of Toronto
Williams College (IBM Lectureship)
Roanoke College (Fowler Lectureship)
Hebrew University, Jerusalem
Maryland Bar Assn., Baltimore
California Attorneys for Criminal Justice, Los Angeles
Canadian Bar Assn., Ontario Branch
ATLA, Annual Meeting
Northwestern Law School
Philadelphia Public Defender's Office
Seattle Public Defender's Office
Nova Scotia Barristers, Halifax
Science and Public Policy Seminar, Federation, Washington, DC
California State University Administrators Conference on Computers & Education
Continuing Medical Education, University of Washington

1985
California State University, Long Beach
Vanderbilt/Peabody, Nashville
North Carolina Psychological Conference, North Carolina State
Ohio Wesleyan University
Minnesota Psychology Conference
Creighton University, Nebraska
Florida State University
Leiden University, The Netherlands.
San Diego Defenders
New Mexico Trial Lawyers
Tennessee Assn. of Criminal Defense Lawyers

Northwestern Law School
Washington Assn. of Defense Counsel
ATLA Criminal Seminar, Houston
Court Appointed Special Advocate Assn.
Northwest Women's Law Center
Colorado Defense Lawyers Assn.
American Association of Law Libraries, NY
University of Bridgeport Law School
Texas Research Institute, Houston
German Psychological Society (Law & Psychology Div.), Braunschweig, FRG
Institute for Perception, TNO, Soesterberg, The Netherlands

1986
SUNY, Stony Brook
Oregon State University
University of Michigan (Survey Research)
University of Maryland
Duke University
Johns Hopkins University
Judicial Studies Program (California Judges)
Michigan Judicial Institute (Michigan Judges)
Texas Assn. of Defense Counsel, San Francisco
All-Star Seminar, Atlanta Bar, Atlanta
US Census Bureau, Washington, DC
Annenberg School of Communication
Women and Memory, University of Michigan
American Assn. of Public Opinion Res., Washington, DC
Federal Judicial Center
Capitol Area Social Psychological Assn.
Bureau of Labor Statistics
Washington DC Public Defenders
Smithsonian Institute

1987
University of Nevada, Reno
University of North Dakota
California Judicial Studies
Harvard Law School
Duke Law School
University of South Carolina Law School
Annual Joseph Cohen Lectureship, University of Missouri, Kansas City
British Psychological Society, Brighton, England
US Court of Military Appeals Conference., Washington, DC
National Academy of Arbitrators, New Orleans
Judicial Conference of Washington, DC
University of UMEA, Sweden
Cleveland-Marshall Law School, Cleveland
Indiana University Law School, Bloomington
Indiana University Psychology Department
Hebrew University, Jerusalem
Cornell University

Washington Assoc. of Criminal Defense Lawyers
Tennessee Assoc. of Criminal Defense Lawyers
Recorder's Court, Detroit

1988
California Judicial Studies (Judges)
Washington Criminal Justice Training Committee (Police)
ATLA, New York
New York University
Northwestern Law School
Ohio Assn. of Criminal Defense Lawyers, Cincinnati
Baylor University, Waco, Texas (Oral History & Memory)
Southeastern Louisiana University (Scholar in residence)
Haveford College
Arizona State University (Psychology Department and Law School)
Rocky Mountain Psychological Association (Keynote Speaker)
University of Oregon
North Carolina Academy of Trial Lawyers, Greensboro
Lane County Law Forum, Oregon
NATO Advanced Study Institute, Maratea, Italy
ATLA, Annual Meeting, Kansas City
Northwestern Law School for prosecutors and defense attorneys
Cook County Public Defenders
International Congress of Psychology, Sydney, Australia (Keynote Speaker)
Medico Legal Society of Queensland, Australia
Brigham Young University Law School
BYU Psychology Department
Baylor University Law School
University of California, San Diego
University of Washington Law School

1989
Yale University Law School
Yale Psychology Department
University of Michigan
University of California, San Diego
Northern Kentucky University
Southern Indiana University, Evansville (Mid-America Conference, Keynote)
Northwestern Law School
Western Psychological Association, Reno
Northwestern Law School for prosecutors and defense attorneys, Chicago
American Bar Association, Litigation Section, Honolulu
British Psychological Society, Cognitive Section, Cambridge, England

1990
Leiden University, the Netherlands
Emory University, Flashbulb Memory Conference
American Bar Association, Satellite Seminar on Jury Comprehension, Washington, DC
University of West Virginia, Practical Cognition Conference.
ABA Litigation Sec, Trial Practice Committee, Phoenix

Annenberg Conference on Selecting Impartial Juries, Washington DC
University of Pittsburgh
Northwestern Law School
European Conference on Law & Psychology, Nuremberg, Germany
University of Minnesota Law School

1991
National Institute on Teaching of Psychology, Florida
ABA (American Bar Foundation)
Ontario Psychological Association, Toronto
Ryerson College, Canada, 11th Annual Psychology Lecture
Arkansas Annual Psychology Conference (Keynote Speaker)
Seattle Rotary
Northwestern University Law School
University of Lethbridge, Canada
Banff Conference on Cognitive Science, Canada
Society of British Columbia, Continuing Legal Education
Fordham University, NY
Legal Aid Society, NY
AIDS Survey Research Methodology Conference., Rockville, MD
Course for prosecuting and defense attorneys, Northwestern Law
American Psychological Association, San Francisco, CA
University of Toronto
Ontario Science Centre
Chief Executive Organization Forum, Vancouver
University of Georgia (Wm. Owens Annual Lectureship)
8th International Conference. on Multiple Personality/Dissociative States (Plenary Speaker), Chicago
Federal Bureau of Investigation (FBI), Washington State

1992
International Listening Association (Keynote Speaker)
University of Tennessee, Knoxville
Mississippi State University
Federal Defenders Association, San Diego
Reed College
Portland Community College
University of California, Santa Cruz
Augustana College, Illinois (Stone Memorial Lecture)
Canadian Bar Association, Toronto
University of Toledo
NATO Conference, Lucca, Italy
Criminal Justice Act Seminar (Keynote Speaker), San Diego.
Psi Chi/Fredrick Howell Lewis Distinguished lecture, APA, Washington DC
Grand Rounds, Department of Psychiatry, University of Washington Medical School
Air Force Academy, Colorado Springs
Faculty Auxiliary, University of Washington
University of Stockholm, Sweden
Swedish Psychological Association (Keynote Speaker)
Gruter Institute, Squaw Valley

Lawrence University (Wisconsin, Convocation Speaker)
FJC Criminal Procedure Seminar for Federal Judges, Palm Beach

1993
McGill University (D.O. Hebb Lecturer)
American Psychiatric Association, San Francisco
Law-Psychology Symposium (Keynote Speaker), Cal State, Fullerton
New Mexico Psychological Assoc./New Mexico Trial Lawyers, Santa Fe
FMS Foundation Conference, Valley Forge, PA
Young President's Organization Alumnus (YPOA), Seattle
Pacific Northwest Writers, Seattle
Midwestern Psychological Association, Chicago
NACDL/ATLA College of Trial Advocacy Seminar, Las Vegas
American Academy of Forensic Psychology, Continuing Education, Invited Workshop
Mystery Writers of America
Colorado Psychological Association, Aspen
Swiss Memory Psychology Program, Vals, Switzerland
Medical-Legal Society of Toronto
American Psychological Association, Invited Presidential Debate, Toronto
Midwest Conference on Child Sexual Abuse & Incest, Madison, Wisconsin
Clark University, Conference on Trauma and Memory.

1994
Orrick, Herrington, Sutcliffe Retreat, Silverado
Mercer Island Rotary
Seattle Forensic Institute
Bay State Medical Center, Trauma and Memory Conference. Springfield, Mass.
University of New Mexico Medical School (Grand Rounds)
Red River Undergraduate Conference, Fargo, North Dakota (Keynote)
Leiden University, The Netherlands
National Association of Criminal Defense Lawyers, Washington, DC
Washington Association of Criminal Defense Attorneys
University of San Diego, School of Law, CLE
Missoula Psychiatric Services, Conference on Law and Psychiatry, Missoula, Montana
Mind/Brain/Behavior Program. Memory Distortion Conference, Harvard University
Georgia Psychological Association Continuing Education, Atlanta
Simon Fraser University, (Keynote speaker, conference on Memories of Sexual Abuse), Vancouver, Canada
7th Annual Dual Disorder Conference, Bellevue, Washington
Stanford University, Psychology Colloquium
Stanford University Medical School, Department of Psychiatry, Grand Rounds.
American Psychological Society (Teaching Institute), Wash. DC
Committee for the Scientific Investigation of Claims of the Paranormal (CSICOP)
Psych Methods in the Investigation and Court Treatment of Sexual Abuse, Tromso, Norway
American Association of Public Welfare Attorneys, Seattle
Japanese Psychological Association (keynote), Tokyo
Japan Federation of Bar Associations, Tokyo
University of Colorado, Denver.
Current Topics in Mental Health & Law, Seattle.
Criminal Lawyers' Association, Toronto.
Criminal Trial Lawyers Association, Alberta, Canada.

Johns Hopkins Medical School/FMS Foundation Conference on Memory and Reality, Baltimore, Maryland (keynote speaker).

1995
University of Washington Medical School, Pain Grand Rounds
University of California at Los Angeles
American Academy of Forensic Sciences, Annual Meeting.
King County Detectives, Special Assault Unit.
University of Pittsburgh
Pennsylvania Conference of State Trial Judges
University of California, San Francisco, Dept. of Psychiatry Grand Rounds.
University of Kansas Medical Center (Childhood sex abuse and memories conference).
Indiana University, South Bend (keynote to commemorate 175th year anniversary of IU).
Rice University, Houston.
Battig Memorial Lecturer, Rocky Mountain Psych. Association, Boulder
National Judicial Institute, Seminar for Judges, Winnipeg, Manitoba, Canada.
University of Illinois at Chicago, Distinguished Lecture - Midwestern Psych. Association, Chicago
Carnegie Mellon University, 27th annual conference, Pittsburgh.
National Association of Legal Investigators, Annual Convention, Portland.
American Psychological Society (Invited speaker), New York.
Charter Behavioral Health System of Dallas Workshops on Memory, Sexual Trauma & the Law, (Invited speaker), Seattle, San Francisco, San Diego.
Council of Appellate Staff Attorneys (ABA Seminar), Blaine, Washington.
American Academy of Forensic Psychology, Distinguished Contributions Award address, APA annual meeting, New York City.
University of Pennsylvania Medical School, Department of Psychiatry (Grand Rounds)
Association for Advancement of Behavior Therapy Annual meeting, Washington DC (keynote)
California Public Defenders Association, Napa, California
Beth Israel Hospital, Harvard Medical School, Psychiatry Grand Rounds (in honor of F. Frankel)
Fourth Annual Conference on Mental Health and the Law, Orlando, Florida
International Society for the Study of Dissociation, Lake Buena Vista, Florida
California State University, Humboldt County, California
Western Humanities Conference, Santa Barbara (keynote: Illusions of Memory)
Washington State Psychological Association, Annual meeting (Featured Speaker), Tacoma
American Academy of Psychiatry and the Law (Luncheon keynote: Memory Distortion), Annual Meeting, Seattle, Washington
Criminal Lawyers Association, Toronto
University of Kansas (Ferre-Fischer-Formann Lecturer), Lawrence, Kansas
Judgment & Decision Making Conference, Annual meeting, Los Angeles (keynote)
Adelphi University, Consciousness Symposium, Centennial Speaker, Garden City, New York.
Washington University Medical School, Psychiatry (Gildea Lecture), St. Louis

1996
Calvin College, The January Series, Grand Rapids, Michigan
University of California, Davis, Neuroscience Colloquium
Interval Research Corporation, Palo Alto
Pacific Sociological Association , Annual Meeting, Seattle
John Hopkins Medical Institute/FMSF speech, San Diego
Southwestern Psych. Association, Annual Meeting, Houston (keynote)
Memory Retrieval Controversy Conference, Trent University, Peterborough, Ontario

Tenth National Conference on Undergraduate Research, Univ. of North Carolina, Asheville, (keynote)
American Philosophical Society, Annual Meeting, Philadelphia
NATO International Conference, Recollections of trauma, France (main speaker)
Second International Conference on Memory, University of Padova, Italy (keynote)
International Conference on Centenary of Piaget's Birth, Universite de Neuchatel, Switzerland
Grinnell College, Scholars' Convocation speaker, Grinnell, Iowa
University of Texas, Houston, Department of Psychiatry and Behavioral Sciences
University of California, Riverside, Memory Recovery & Creation Conference (keynote)
Ohio University, Athens, Ohio
University of South Florida, Sarasota, Conference on Child Abuse in Our Time
Seattle Forensic Institute, Conference on Sexual Abuse and its Recollection
National Guild of Hypnotists, Pacific NW Chapter and the Washington Hypnosis Association
American Psychological Society, Annual meeting, San Francisco (Presidential Symposium speaker)
Emory University, Atlanta
University of Texas, Austin
National Child Abuse Defense & Resource Center, 5th International Conference, Las Vegas, NV
Iowa State University, Ames, Iowa
Nebraska Psychological Association, Omaha
Washington University, St. Louis
Exploratorium (Science Museum), San Francisco
National Institute of Health, Conference on Self-Report, Bethesda, MD
California Attorneys for Criminal Justice, San Francisco

1997

Justice Committee, Conference on "Day of Contrition," Salem, MA
National Institute of Health, Conference on Undue Influence, Bethesda, MD
American Association for Advancement of Science, Annual Meeting
Washington University, St. Louis (Assembly Speaker)
University of Arizona
Penn State University, Inaugural Herschel W. and Eileen W. Leibowitz Lecture, University Park, PA
Johns Hopkins University Medical School, Baltimore, MD
False Memory Syndrome Foundation Conference, Baltimore, MD
Bradley University, Centennial Speaker, Peoria, IL
American College of Forensic Psychology, Main Speaker, Vancouver, Canada
Western Psychological Association, Invited speaker, Seattle, WA
National Institute on Drug Abuse, Rockville, MD
International Women's Forum, Washington D.C.
Center for Inquiry--Rockies, Conference on Gender Politics of Science, Boulder, CO
Memory Conference, Keynote Address, Bar Ilan University, Israel
National Child Abuse Def & Resource Center, 6th Internat. Conf., Las Vegas, NV
University of Groningen, Groningen, The Netherlands (Studium Generale)
Lecture, Heymans Institute for Fundamental Psychologic Res, Univ. of Groningen
Twente University, Enschede, The Netherlands
University of Maastricht, The Netherlands
The Whidden Lectures, McMaster University, Hamilton, Canada

1998

Conference on False Memory Creation, Florida Atlantic University, Boca Raton
Conference on Recovering Repressed Memories or Creating False Ones, Florida Atlantic University
The Marian Jane Girard Memorial Lecture, Scripps College, CA
American Psychology-Law Society (Major invited address), Redondo, CA

Florida Cognition Conference (Keynote speaker), Florida International University
8th Annual National Symposium on Mental Health & Law, Miami, FL
The Spes Society, Naples, FL
University of Michigan , Cognitive Psychology Group
State Bar of Michigan, Litigation Section (featured guest speaker), Ann Arbor, MI
Washington Association of Criminal Defense Lawyers Annual Meeting
Baldwin-Wallace College, Harrington Visiting Professor (HVP), Ohio
National Association of Criminal Defense Lawyers annual meeting, Santa Monica, CA
Conneticut Bar Association., Eyewitness Testimony & False Memories (Special Guest Speaker), Hartford, CT
Conference On Memory, Consciousness, Brain (Tulving Conf.), Tallinn, Estonia
Florida Association of Criminal Defense Lawyers, Marco Island
Conference on Reconstructing the Past, Stockholm, Sweden
Conference on Psychology of Testimony, Portsmouth, England (Keynote)
University of Portsmouth, England 1998 Commencement
University of Bristol, Bristol, England
2nd World Skeptics Congress, University of Heidelberg, Germany (Keynote address)
Paul McReynold's Lecturer, University of Nevada, Reno
Conference "Embracing Science in an Irrational World", Center for Inquiry Institute, Bellevue, WA.
National Child Abuse Def & Resource Center, 7th Internat. Conf., Las Vegas, NV
Conference "Memory & Suggestibility in psychotherapeutic relationships", Psychoanalytic Institute, St. Louis, MO
National Conference On Wrongful Convictions, Northwestern University Law School, Chicago.
The Exploratorium (Science Museum), San Francisco

1999
Seattle University School of Law, Tacoma
University of California, Irvine and Irvine Health Foundation
Ohio Association of Criminal Defense Lawyers, Dayton
George Fox University, Oregon: Social Sciences Conference (Keynote speaker) Newberg, Or.
Idaho Neurological Institute, Saint Alphonsus Medical Center, Boise, Id
Idaho Psychological Association, CE, Coeur D'Alene
National Legal Aid & Defender Assn, Death Penalty Conf., Atlanta, Ga
West Va., Psychology Conf., Marshall University, Huntington,, W. Va., (Keynote)
Eastern Psychological Association, Providence, RI (Presidential Speaker)
6th Annual California State Univ. Psychology Research Fair, San Marcos, Ca (Keynote)
West Virginia State Bar Assoc., Morgantown,, WV
New York Skeptics Society, NY (isaac Asimov Lecture Award)
Northwest Cognition Conference, Victoria, B.C. (Keynote)
Iowa Public Defender's Annual Meeting, Dubuque, IO
West Virginia Public Defender's Annual Meeting, Canaan Valley, WV
Clark County Bar Association CLE, Las Vegas, NV
Tennessee Association of Criminal Defense Lawyers, Nashville, TN
Indiana University, Bloomington (Patten Lecturer)
New Hampshire Public Defender's Association, Manchester
Dartmouth University, Hanover (Symposium on the Future of Psychological and Brain Sciences, in honor of dedication of Moore Hall)
8th International Conference on Allegations of Child abuse, Las Vegas, NV
Ernest Becker Foundation
University of North Carolina, Greensboro, Harriet Elliot Lecture Series

Federal Bureau of Investigation, Agents Training Conference
Indiana Public Defender Council, Indianapolis

2000

Stanford University (Zimbardo Millenium)
University of Northern Colorado, Greeley
Wrongful Conviction Conference, Newport Beach, CA
University of North Florida, Jacksonville
California State University, Sacramento
New York Medical College, Westchester, NY
Memory and Reality Conference, FMS Foundation, White Plains, NY
Innocence Project Conference, Cavanaugh's, Seattle, WA
Johnson Memorial Lecture, Minnesota Psychology Undergraduate Conference, Macalester College, Minn.
National Association of Criminal Defense Lawyers (NACDL), Tuscon, AZ
Vrije Universiteit (Free University), Amsterdam, Netherlands.
American Psychological Society, Teaching Institute, Miami, FL
Oregon Association of Criminal Defense Lawyers, Bend, OR
Columbia Univ., Dept of Psychiatry, Grand Rounds, NY
Georgia Indigent Defense Council, Atlanta
New Zealand Psychological Society (keynote), Hamilton, NZ
Victoria University, Wellington, New Zealand
University of Otago, Dunedin, NZ
University of Wisconsin, Parkside
University of Tennessee Law School, Knoxville
National Child Abuse Def. & Resource Center, Kansas City
University of Tennessee Psychology Colloquium
Barristers, Solicitors, Psychiatrists: Fitzwilliam hotel, Dublin, Ireland
William & Mary School of Law, Williamsburg, VA
Psychology Colloq, William & Mary College, VA

2001

California Public Defenders Association, Palm Springs, CA
University of Oklahoma, Norman
National Association of Criminal Defense Lawyers, Las Vegas
National Legal Aid and Defender Assn, Albuquerque, NM
University of California, Irvine.
Science & Technology, Flaschner Judicial Institute, Brandeis Univ.
Rochester Institute of Technology, Rochester, NY.
New York Academy of Medicine (& Anna Freud Centre), New York.

Revised: 4/2001

Appendix F

Manitoba Guidelines Respecting the Use of Jailhouse Informants

Manitoba
Department of Justice
Prosecutions

Guideline No. 2:INF:1

Policy Directive

Subject: Interim In-Custody Informer Policy
Date: July 12, 2000

The testimony of an in-custody informer is inherently suspect. Reliance on this type of evidence should be the exception, not the rule. The purpose of this policy directive is to highlight the dangers associated with this type of evidence, to outline a process for evaluating the reliability of the evidence in individual cases, and to describe the circumstances in which it may be tendered on behalf of the Crown.

The Dangers

In his landmark report on the *Morin* case, the Honourable Fred Kaufman, former Judge of the Quebec Court of Appeal, said as follows:

> In-custody informers are almost invariably motivated by self-interest. They often have little or no respect for the truth or their testimonial oath or affirmation. Accordingly, they may lie or tell the truth, depending only upon where their perceived self-interest lies. In-custody confessions are often easy to allege and difficult, if not impossible, to disprove...
>
> The evidence at this Inquiry demonstrates the inherent unreliability of in-custody informer testimony, its contribution to miscarriages of justice and the substantial risk that the dangers may not be fully appreciated by the jury. In my view, the present law has developed to the point that a cautionary instruction is virtually mandated in cases where the in-custody informer's testimony is contested: see *R. v. Simmons*, [[1998] O.J. No. 152 (QL)(C.A.)]; R. v. Bevan, [(1993), 82 C.C.C. (3d) 310].

Subsequently, Binnie, J. of the Supreme Court of Canada highlighted the dangers associated with the evidence of in-custody informers (sometimes called "Jailhouse Informants") in *R. v. Brooks* (2000), 141 C.C.C. (3d) 321 (S.C.C.), at p. 360:

> ..."jailhouse informant" is a term that conveniently captures a number of factors that are highly relevant to the need for caution. These include the facts that the jailhouse informant is already in the power of the state, is looking to better his or her situation in a jailhouse environment where bargaining power is otherwise hard to come by, and will often have a history of criminality.

Scope of this Policy

This policy applies where any inmate, imprisoned in either a provincial or federal correctional facility anywhere in Canada, usually pending trial or awaiting sentence, claims to have heard another prisoner make an admission about his or her case, and seeks to testify about it on behalf of the Crown. It is immaterial whether the proposed inmate witness seeks a benefit from the Crown or not.

The policy is not intended to address the use of police undercover operators, nor to limit the use of in-custody informers to advance police investigations.[1]

Criteria

Before calling any in-custody informer as a witness on behalf of the Crown, a careful evaluation must be made of the reliability of the informer and the truthfulness of the proposed evidence. In making this assessment, the full circumstances of the case and the background of the informer must be assessed, especially the following factors: [2]

1. The extent to which the statement is confirmed by independent evidence;

2. The specificity of the alleged statement. For example, a claim that the accused said "I killed A.B." is easy to make but extremely difficult for any accused to disprove;

3. The extent to which the statement contains details and leads to the discovery of evidence known only to the perpetrator;

4. The degree of access that the in-custody informer has to sources of outside information (e.g. media reports, preliminary inquiry transcripts, the disclosure package, etc.);

5. The informer's general character, which may be evidenced by his or her criminal record or other disreputable conduct;

6. Any request the informer has made for special benefits and any promises that may have been made;

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[1] Concerning the latter, see: *R.v. Leipert* (1997), 112 C.C.C. (3d) 385 (S.C.C.).

[2] These criteria are taken from the Morin Report, and were approved in *R. v. Brooks* (2000), 141 C.C.C. (3d) 321 (S.C.C.), at p. 348-9 (per Major, J., Iacobucci and Arbour JJ.)

7. Whether the informer has in the past given reliable information to the authorities;

8. Whether the informer has previously claimed to have received statements while in-custody;

9. Whether the informer has previously testified in any court proceeding and the accuracy or reliability of that evidence, if known;

10. Whether the informer made some written or other record of the words allegedly spoken by the accused and, if so, whether the record was made contemporaneously with the alleged statement of the accused;

11. The circumstances under which the informer's report of the alleged statement was taken (i.e., how soon after it was made and to more than one officer, etc.);

12. The manner in which the report was taken by the police;

13. Any other known evidence that may attest to or diminish the credibility of the informer, including the presence or absence of any relationship between the accused and the informer;

14. Any relevant information contained in the Manitoba Justice In-Custody Informer Registry;

15. Any medical or psychiatric reports concerning the in-custody informer where relevant;

Under no circumstance shall Crown Counsel call an in-custody informer who has a previous conviction for perjury, or any other conviction for dishonesty under oath or affirmation, unless the admission sought to be tendered was audio or video recorded, and authenticity of the recording can be verified, or the statements attributed to the accused are corroborated in a material way.[3] Nor, in general, shall counsel proceed to trial where the testimony of the in-custody informer is the sole evidence linking the accused to the offence.

The Decision Whether to Call the Evidence: Establishment of an In-Custody Informer Assessment Committee

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[3] For instance, where the informer claims that the accused admitted he killed someone and disposed of the body at a particular location, and the police investigation locates the body at the location and under the circumstances described by the informer.

The decision whether to call an in-custody informer as a witness on behalf of the Crown is a collective one, rather than one made only by the Crown Attorney having conduct of the case.

For this purpose, the In-Custody Informer Assessment Committee ("I.C.I.A.C.") is established. It is composed of the following: the Assistant Deputy Attorney General (as chair); Director of Prosecutions; the Senior Crown Attorney in charge; General Counsel, and the Prosecutor having conduct of the case. The mandate of this committee is to consider the proposed witness' evidence, the background of the witness, and the application of the criteria referred to above to the facts of the case in question.

Wherever possible, the Chair should arrange for the police to conduct an investigation that will assist in making a decision on the suitability of calling the in-custody informer as a witness. The Committee should have a broad range of material and information available to inform its decision, including: previous police reports dealing with the informer; a waiver of confidentiality concerning his (or her) prison files; disposition of charges previously laid against the informer; transcripts of previous testimony provided by the informer, including any findings of credibility made by the trial judge; aliases that may previously have been used, and information on whether the proposed witness has previously been turned down as an informant/witness. Any material received should be discussed with the informant before a decision is made.

Before making a final assessment, the in-custody informant must provide a videotaped statement in accordance with the decision of the Supreme Court of Canada in *R. v. K.G.B.* (1993), 79 C.C.C. (3d) 257 (S.C.C.).

In-Custody Informer Registry

Once a decision is taken by the In-Custody Informer Assessment Committee, either to call the informer as a witness or not, the chair of the Committee shall advise the Deputy Attorney General of the result. The office of the Deputy Attorney General shall maintain a registry of all decisions taken by the I.C.I.A.C. The Registry shall be a public document, and information from the Registry shall be available to any member of the public on request, provided that disclosure of the information sought is lawful, will not prejudice any ongoing police investigation, or the conduct of a prosecution, and will not imperil the safety of any person. A decision by the Deputy Attorney General not to release information in a specific case is reviewable by the Ombudsman of Manitoba pursuant to provincial law.

Disclosure to the Defence

The decision to call an in-custody informer as a witness for the Crown creates additional disclosure responsibilities for the prosecuting Crown Attorney. In general, the following shall be provided to the defence in a timely way, although in particular cases there may be an obligation to disclose further materials or information in the possession of the Crown:

a) criminal record of the in-custody informer;

b) Manitoba Registry record of the in-custody informer, if any;

c) particulars respecting any benefits, promises or understandings between the in-custody informer and the crown, police or correctional authorities, including any written agreements to testify;

d) any other known evidence that may attest to or diminish the credibility of the in-custody informer, including any relevant medical or psychological reports accessible to the Crown as well as all of the materials originally placed before the I.C.I.A.C., providing it is lawful to disclose them.

Written Agreement to Testify

Where the I.C.I.A.C. has approved the proposed testimony of an in-custody informer, the Department shall enter into a written agreement with the informer to testify, in which all of the understandings, terms and conditions of that testimony are agreed upon. The purpose of the agreement is to ensure that there is a clear understanding of the basis upon which the informer agrees to provide evidence. In all cases, Crown Counsel will provide the agreement to the defence as part of the pre-trial disclosure, and will seek to file the agreement with the court as an exhibit before the person testifies.[4] A checklist of those issues to be addressed in the agreement has been attached as an Appendix to this policy statement.

In circumstances where the agreement contemplates the conferring of a benefit on the informer (such as a reduction in charges, dropping charges, immunity from prosecution, etc), the benefit should be conferred *before* the in-custody informant testifies: see *R.v. Piercey* (1988), 42 C.C.C. (3d) 475 (Nfld. C.A.); *R.v. Canning* (1937), 68 C.C.C. 321 at page 322-3 (S.C.C.). This will serve to offset any suggestion that the in-custody informer is only providing testimony because there is still something to be gained by testifying in a certain way. Under no circumstances shall the conferring of a benefit on an in-custody informer be conditional upon the conviction of the accused. The informer must also be advised clearly that any benefits are based on the understanding that the testimony provided in court is truthful.

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[4] As suggested by the Privy Council in *R.v. McDonald*, [1983] N.Z.L.R. 252 (P.C.).

Where the informer is charged with further offences prior to completing his or her testimony, prosecuting counsel shall re-assess the future use of the informer as a witness on behalf of the Crown.

Prosecution of an In-Custody Informer for Giving False Statements

Crown Counsel are expected to prosecute cases vigorously where an in-custody informer has lied to the police, Crown Attorney, or the court. To ensure independent action, it will, in many cases, be necessary to refer the case to an outside police agency and an independent counsel for the prosecution. The purpose of prosecuting in-custody informers who attempt (even unsuccessfully) to falsely implicate an accused is, amongst other things, to deter other members of the prison population from attempting the same thing. If convicted of perjury or a similar offence, Crown Counsel shall ask for a significant consecutive prison term.

Legal Authorities for Further Consideration

As in all cases of this nature, professional judgment will have to be made on whether or not to call a particular witness. In the exercise of that judgment, counsel should bear in mind, and be guided by, the following authorities:

R. v. Brooks (2000), 141 C.C.C. (3d) 321 (S.C.C.);

Ontario, Report of the Commission on Proceedings involving Guy Paul Morin ("Kaufman Report") (Toronto: Ontario Ministry of the Attorney General, 1998);

R. v. Bevan (1993), 82 C.C.C. (3d) 310 (S.C.C.);

R. v. Vetrovec (1982), 67 C.C.C. (2d) 1 (S.C.C.);

Sherrin, Christopher, "Jailhouse Informants, Part I; "Problems with their Use" (1998), 40 C.L.Q. 106;

Sherrin, Christopher, "Jailhouse Informants in the Canadian Criminal Justice System, Part II: Option for Reform" (1998), 40 C.L.Q. 157;

Report of the 1989-1990 Los Angeles Grand Jury: Investigation of the Involvement of Jail House Informants in the Criminal Justice System in Los Angeles County, June 26, 1990.

For ease of reference, it should be noted that the Kaufman Report, referred to above, is available on the Internet at: www.gov.on.ca/ATG/morin, as is the decision of the Supreme Court of Canada in

R. v. Brooks, at: www.droit.umontreal.ca/doc/csc-scc/en/index.html

Interim Policy

This is an interim statement of the Attorney General's policy respecting in-custody informers, pending receipt of any recommendations that may be made by the Honourable Peter de C. Cory in the Inquiry directed in the matter of Thomas Sophonow by virtue of Order-in-Council #232/2000.

Appendix

Contents of Immunity Agreements: A Checklist

An agreement with an in-custody informer should be in writing, be signed by and given to the witness before testifying, and should include, among other things, the following information:

a) the name of the in-custody informant who is entering into the agreement;

b) the person to whom the benefit is to be provided (if any) (usually the in-custody informant himself);

c) the benefit to be provided (e.g. staying existing charges, release from custody, Crown to suggest a particular sentence on outstanding charges, etc.);

d) the scope of the agreement (that it does not extend to crimes undisclosed by the in-custody informant, crimes unknown to the police and any future crimes that may be committed by the in-custody informant);

e) the evidence or other information provided by the in-custody informant in exchange for the benefit;

f) any additional commitments made by the parties, including the specifics of any expenditures to be made by the Crown;

g) a general description of what will amount to a breach of the agreement, and the consequences of such a breach;

h) an explicit statement by the in-custody informant that he or she is providing truthful information and will testify truthfully in all court proceedings;

i) a statement that the In-Custody Informer Assessment Committee has reviewed the agreement and endorses it;

j) the signatures of the Assistant Deputy Attorney General and the in-custody informant.

Appendix G

Criminal Record of Thomas Sophonow

RC CRIMINAL CONVICTIONS AND RELATED INFORMATION — CONDAMNATIO[N] AU CRIMINEL RENSEIGNEME[NTS] CONNEXES

SUMMARY OF POLICE INFORMATION (NOT INTENDED FOR SENTENCING PURPOSES) — RESTRICTED

RÉSUM[É] DES RENSE[IGNEMENTS] POLICIE[RS] (À NE PAS UTILISER AUX FINS DE LA SENTENCE) — DIFFUSION RESTR[EINTE]

SOPHONOV, THOMAS
SOPHONOV, THOMAS

6A
01

FPS 456604A

09

0-E-850516-12[illegible]

DATE AND PLACE OF SENTENCE / DATE DE LA SENTENCE ET ENDROIT	CHARGE - ACCUSATION	DISPOSITION	DATE, PLACE, CHARGE AND DISPOSITION / DATE, ENDROIT, ACCUSATION ET DÉCISION	DISTRIBUTION
1971-04-23 VANCOUVER BC	OBTAIN FOOD BY FRAUD SEC 307(1) CC	$50 I-D 14 DAYS - PROBATION FOR 1 YR & RESTITUTION	[redacted]	X01 RCMP CIS VANCO[UVER]
1971-06-18 VANCOUVER BC	POSS OF STOLEN PROPERTY SEC 296(A) CC (3 CHGS)	SUSP SENT & PROBATION FOR 3 YRS		X02 PD VANCOUVER BC
1971-12-01 VANCOUVER BC	ATT FALSE PRETENCES	6 MOS DEF & 9 MOS INDEF		03 PD WEST VANCOUV[ER] 1098
1973-01-25 VANCOUVER BC	THEFT UNDER $200 SEC 294(B) CC	4 MOS - PROBATION 1 YR		X04 FBI WASH DC US/ 349 491 J5
1973-11-28 VANCOUVER BC	FAIL TO COMPLY WITH PROBATION SEC 666(1) CC	$50 I-D 14 DAYS		X05 PD WINNIPEG MAI 50709
1974-05-14 WEST VANCOUVER BC	POSS OF STOLEN PROPERTY SEC 312 CC	$300 I-D 3 MOS & 18 MOS PROBATION		X06 RCMP CIS WINNI[PEG]
1975-07-21 WINNIPEG MAN	(1) ATT HOUSE BREAK ENTER & THEFT (2) BREAK ENTER & THEFT (2 CHGS) (3) THEFT (2 CHGS)	(1-3) 3 MOS ON EACH CHG CONC		X07 CI HEADINGLEY [MAN] 1411.75
				X08 DANG DRUGS OTTA
				X09 09 INST STONY MTN WINNIPEG MAN 52
1975-11-21 VANCOUVER BC	FAIL TO COMPLY WITH ORDER SEC 666(1) CC (3 CHGS)	21 DAYS ON EACH CHG CONC & PROBATION FOR 18 MOS UPON RELEASE		X10 NPB SASKATOON S
				11 PIN SERV OTTAWA
1983-03-17 WINNIPEG MAN	MURDER	LIFE IMPRISONMENT		

[illegible]RICTED — [illegible]ONNEL

Information supported by fingerprints, submitted by law enforcement agencies.

Renseignements communiqués par les organismes d'exécution de la loi et corroborés par des empreintes

DÉTACH HERE

SGT TOUGE
BOUNDISTRICT

Appendix H

Curriculum Vitae of Dr. Clifford Silverthorne

Telephone: 482-6100
Fax No.: 482-6102

#204 - 6440 Royal Oak Ave.
Burnaby, B.C. V5H 3P2

Kurt N. Gottschling, M.D., Inc.
D.B. Wagar, M.D., Inc.
C. Silverthorne, M.D. Inc.
David W. Jones, B.Sc., M.D.
Dr. R.E. Hiller, Inc.
P.J. Hanam, B.Sc., M.D.
Physicians & Surgeons in General Practice

MY QUALIFICATIONS TO ACT AS AN EXPERT MEDICAL WITNESS ARE:

1. B.Sc. U.B.C. - 1968.
2. One year toward M.Sc. program in Pharmacology.
3. M.D. U.B.C. - 1973.
4. Family Practice Internship, Vancouver General Hospital, 1973-1974.
5. Family Practice, Burnaby (above address), 1974 - present.
6. Chairman of Emergency & Ambulatory Care Department, Burnaby Hospital, 1979-1981.
7. Head of Department of Family Practice, Burnaby Hospital, January 1, 1989 - December 31, 1990.
8. Vice Chief of Staff, Burnaby Hospital, January 1, 1991 - December 31, 1992.
9. Chief of Staff, Burnaby Hospital, January 1, 1993 - December 31, 1994.

DATE: _____ SIGNED: _____

C.H. Silverthorne, MD

Appendix I

Curriculum Vitae of Joel Grymaloski

Joel Grymaloski
FAMILY THERAPIST

105 - 1008 Beach Ave., Vancouver, V6E 1T7
(604) 685-5521

CURRICULUM VITAE

PROFESSIONAL ASSOCIATION:

Canadian Psychological Association

EDUCATION:

M.A., Clinical Psychology
University of Regina, Regina, Saskatchewan

Studies included:

- interviewing: intake, assessment: individual, couples, families and groups;
- psychopathology; psychometrics;
- psychotherapy; group, family, individual, couple;
- research models, methodology and statistics;
- clinical internship;

Thesis topic: *Persistent School Absenteeism; A Maladapted Form of Coping.* An exploratory study examining the interrelationships between source, mediating and outcome factors. This research was a field study employing a multivariate correlational design of inner-city, grades 7 and 8 public school students' responses to a variety of questionnaires.

Professional "A" Teaching Certificate, (B.Ed. equivalent)
University of Regina, Regina, Saskatchewan
Completion: May, 1974

PROFESSIONAL EXPERIENCE:

Jan. 7 / '90 to Present
Self-employed, *Joel Grymaloski - Family Therapist*
105 - 1008 Beach Ave., Vancouver, BC; V6E 1T7

Practice Description:

- individual, couple and family therapy; dysfunctional family of origin dynamics, physical and/or sexual and/or emotional abuse, depression, anxiety, P.T.S.D., phobias, eating disorders and psychotic thinking/delusions.
- Men's, women's and coed groups; a multimethod approach with an emphasis on *Empowerment, Change* and *Self-fulfillment.*
- Pre-employment assessment: a psychological work-up (personality traits, interpersonal skills and abilities) for a corporate client.

Joel Grymaloski

PROFESSIONAL EXPERIENCE (cont.):

Jan. 9 / '89 to Dec. 29 / '89
Child and Family Counselor II, *Labor and Consumer Services, Alcohol and Drug Program*
Burnaby Clinic, Burnaby, BC

Performance Requirements:
- Assessment and therapy with substance abuse clients which included: adolescents, families, couples and individuals. Issues: dysfunctional family of origin dynamics - - physical, sexual and/or emotional abuse.
- Case conferencing and joint sessions with fellow staff members.
- Developed, and led a group, where prosocial skills and substance abuse education was provided for *Involuntary / Mandatory* (driving while impaired) clients.

Jul. 6 / '88 to Oct. 31 / '88
Psychologist I, *Swift Current Mental Health Clinic*, 350 Cheadle Street West, Swift Current, Saskatchewan S9H 4G3

Performance Requirements:
- Clinical and Psychometric assessment of children, adolescents, couples, families and adults.
- Determination of DSM III diagnosis; treatment plan.
- Writing of reports concerning interview findings, test results, diagnostic impressions and intervention effects.
- Treatment / Therapy with individual clients. In this rural and isolated setting I had a number of sexually dysfunctional clientele: intergenerational incest, sexual fetishism, and court referred sexual offenders.
- Family therapy.
- Group therapy: treatment group for youth sexual offenders, (developed after an extended workshop with Dr. Janet Orchard and Gerry Perry); pro-social skill training group for adolescents, and support/skill development group for long term chronic adults.
- Interdepartmental case conferences with: social work, psychiatry, hospital ward.

Jan. '86 to Aug. '87
Psychology Assistant, *Child and Youth Services*, 1601 College Avenue, Regina, Saskatchewan

This job position started out as my second clinical practicum from January to June of 1986. The practicum was a full time position and involved 1000 hours in a clinical setting approved by the University with an approved supervisor. Dr. Elizabeth Ivanochko (see references) was my practicum supervisor and became my clinical supervisor, after I was hired on full- time with Child and Youth Services. I completed 2200 hours as an employee, with the continuing supervision of Dr. Ivanochko, before leaving to collect my research data and write my thesis.

Joel Grymaloski

PROFESSIONAL EXPERIENCE (cont.):

Jan. '86 to Aug. '87
Psychology Assistant (cont.)

Performance Requirements:
- Psychometric assessment of adolescents.
- Planning and selection of assessment instruments.
- Determination of DSM III diagnosis.
- Formulation of treatment plan under supervision.
- Writing of reports concerning interview findings, test results, diagnostic impressions and intervention effects.
- Treatment / Therapy with individuals, couples and families under supervision.
- Group Therapy: ran an anger management group for adolescents.
- Interdepartmental case conferences with fellow psychologists, social workers, a psychiatrist, and a language/speech pathologist.

Jan. '85 to Dec. '85
Counselor, *University of Regina,* Regina, Saskatchewan
Part-time work while attending graduate school; 20 hours / week - - represented my first Clinical Practicum of 400 hours. I was hired on the second semester for an additional 400 hours.

Performance Requirements:
- Provide personal, career and study skills counseling to members of the university community; (supervised by Dr. Norm Coons);
- Group counseling; leader of *Assertiveness Training Sessions.*

Feb. '77 to Jun. '80
Substitute Teacher, *Vancouver Lower Mainland School Boards:* Mission & Maple Ridge, BC.

PERSONAL DATA
- Born Feb. 15 / '53
- Married since June, 1974; two adult sons
- Canadian citizenship
- Non-smoker

Joel Grymaloski

PROFESSIONAL REFERENCES:

Dr. David Randall
Director of Psychology
Child and Youth Services
1601 College Ave.
Regina, Saskatchewan
Ph. (306) 787-3400

Dr. Elizabeth Ivanochko
1601 College Ave.
Regina, Saskatchewan
Ph. (306) 787-3400
Clinical Practicum supervisor; became my clinical job supervisor.

Mr. Walter Moy
Director - Burnaby Clinic
5679 Imperial Street
Burnaby, BC
Ph. (604) 660-5900

Dr. Norm Coons *(Supervisor)*
University Counselling Services
University of Regina
Regina, Saskatchewan
Ph. (306) 584-4491

Appendix J

Curriculum Vitae of Dr. Adrian Grounds

CURRICULUM VITAE

Adrian Thomas GROUNDS

Date of Birth:	21 February 1952
Address:	Institute of Criminology
	7 West Road, Cambridge CB3 9DT
Tel:	01 223 335 379
	01 223 217 941
	01 487 773 335 (home)
Fax:	01 223 335 356
e-mail:	ag113@cam.ac.uk

Present Appointment (since 1987):

University Lecturer in Forensic Psychiatry, Institute of Criminology and Department of Psychiatry, University of Cambridge.

Honorary Consultant Forensic Psychiatrist, Addenbrooke's NHS Trust.

Fellow of Darwin College, Cambridge.

Qualifications:

B Med Sci, BM, BS (Nottingham 1977); DM (1987)
MRCPsych (1981); FRCPsych (1996)

Career:

SHO and Registrar in Forensic Psychiatry, Maudsley Hospital, 1979-81
Senior Registrar in Forensic Psychiatry, Broadmoor Hospital & Bethlem and Maudsley Hospitals, 1982-84; Clinical Lecturer, Institute of Psychiatry 1984-87

Other Appointments:

1987-	Editorial Advisory Group, The Howard Journal of Criminal Justice.
1988-92	Executive Committee, Forensic Psychiatry Specialist Section, Royal College of Psychiatrists.
1988-92	Programmes and Meetings Committee, Royal College of Psychiatrists.
1989-92	Director of M.Phil Course in Criminology, Institute of Criminology.
1989-94	Committeee on the Mentally Disordered Offender, Mental Health Foundation.
1991	Department of Health/Home Office Review of Services for Mentally Disordered Offenders and others requiring similar services: Prison Advisory Group, and Research Advisory Group
1995	Member, Independent Panel of Inquiry into the Case of Jason Mitchell.
1996	Editorial Board, The British Journal of Criminology.
1998	Sentence Review Commissioner, Northern Ireland
2000	Convenor, Hospital Advisory Service 2000 Review Team, Personality Disorder Service, Ashworth Hospital.

Teaching/Examining:

Contributions to: M.Phil Course in Criminology, Diploma/M.St. in Applied Criminology Social and Political Sciences Tripos, Clinical Course (Psychiatry Attachment) Diploma in Public Health, PhD supervision and examining

External Examiner, University of London (MD); University of Liverpool (M.Sc. in Forensic Behavioural Science)

Post-Graduate Training:

Established East Anglian Regional Higher Training Scheme in Forensic Psychiatry, and Scheme Organiser (1990-1994)

MRCPsych Part II course, Cambridge.

Judicial Studies Board Seminars: Mentally Disordered Offenders.

Research Grants:

December 1988 2¼ year research grant from Home Office Research and Planning Unit to carry out a study of referral practice and court disposals of mentally disordered remanded prisoners.

January 1991 1½ year research grant from East Anglian Regional Health Authority to carry out a study of the needs of mentally disordered remanded prisoners in East Anglia.

November 1991 2½ year research grant from Home Office Research and Planning Unit to carry out a study of the supervision of restricted patients (with Mrs S Dell).

April 1993 1½ year research grant (1st applicant Dr J Dowson) from East Anglian Regional Health Authority to carry out a study of the management of patients with personality disorder.

May 1996 2 year research grant (jointly with Dr T Brugha. Univ. of Leicester (lead applicant), Dr T Johnson, Dr D Melzer and Dr H Meltzer) from Dept of Health to carry out a national study of pathways into medium secure care.

May 1998 1 year research grant (jointly with Dr T Brugha. Univ. of Leicester (lead applicant), Dr T Johnson, Dr D Melzer and Dr H Meltzer) from Dept of Health to carry out a national follow up study of mentally disordered prisoners.

Publications:

Grounds, A.T. (1978) Personal View. **British Medical Journal** 2 1428.

Grounds, A.T. (1981) Lectures on Heaven: An Excursion into the Playground of the Theologians. **British Medical Journal** 283 1664-1665.

Grounds, A.T. (1982) Transient Psychoses in Anorexia Nervosa: A Report of Seven Cases. **Psychological Medicine** 12 107-113.

Grounds, A.T. (1985) The Psychiatrist in Court. **British Journal of Hospital Medicine** 33 55-58.

Mawson, D.C., Grounds, A.T. and Tantam D. (1985) Violence and Asberger's Syndrome: A Case Study. **The British Journal of Psychiatry** 147 566-569.

Grounds, A.T. (1985) Punishment and Responsibility. **Religion and Medicine** 1 63-76.

Grounds, A.T. (1986) Psychiatry and Patients' Rights. **British Journal of Hospital Medicine** 36 147-148.

Grounds, A.T. (1986) **The Transfer of Sentenced Prisoners to Broadmoor Hospital.** D.M. Thesis, University of Nottingham.

Grounds, A.T., Quayle, M.T., France, J., Brett, T., Cox, M. and Hamilton, J.R. (1978) A Unit for 'Psychopathic Disorder' Patients in Broadmoor Hospital. **Medicine, Science and the Law** 27 21-31.

Grounds, A.T. (1987) Detention of 'Psychopathic Disorder' Patients in Special Hospitals: critical issues. **The British Journal of Psychiatry** 151 474-478.

Grounds, A.T. (1987) On Describing Mental States. **The British Journal of Medical**

Psychology 60 305-311.

Grounds, A.T. (1988) The Use of the Remand Provisions in the 1983 Mental Health Act. **The Bulletin of The Royal College of Psychiatrists 12** 125-126.

Grounds, A.T. (1988) Applied Criminology. **Current Opinion in Psychiatry** 1 691-693.

Grounds, A.T. (1989) Mental Health Review Tribunals: a new appraisal. **Psychiatric Bulletin of the Royal College of Psychiatrists** 13 299-300.

Grounds, A.T. (1990) The Psychiatric Court Report: mitigation and treatment. In: R. Bluglass and . Bowden (eds) **Principles and Practice of Forensic Psychiatry.** Edinburgh: Churchill Livingstone (pp 223-233).

Grounds, A.T. (1990) Seclusion. In: R. Bluglass and P. Bowden (eds) **Principles and Practice of Forensic Psychiatry.** Edinburgh: Churchill Livingstone (pp 649-652).

Grounds, A.T. (1990) Transfers of Sentenced Prisoners to Hospital. **Criminal Law Review [1990]** 544-551.

Grounds A.T. (1991) The Transfer of Sentenced Prisoners to Hospital 1960-1983: a study in one special hospital **The British Journal of Criminology** 31 54-71

Grounds, A.T. (1991) The Mentally Abnormal Offender in the Criminal Process: some research and policy questions. In: K. Herbst and J. Gunn (eds) **The Mentally Disordered Offender.** London: Butterworth Heinemann. (pp 37-45).

Cox, M. and Grounds, A.T. (1991) The Nearness of the Offence: some theological reflections on forensic psychotherapy. **Theology** 94 106-115.

Grounds, A.T. (1991) The Mentally Disordered in Prison **Prison Service Journal No 80** 20-40.

Dell, S., James, K. S., Robertson, G. R. and Grounds, A. T. (1991) **Mentally Disordered Remanded prisoners: Report to the Home Office** Cambridge: Institute of Criminology.

Grounds, A. T. (1992) Mental Health Problems. In: E.Stockdale and S.Casale (eds) **Criminal Justice under Stress** London: Blackstone Press (pp 197-206).

Grounds, A.T. (1993) (ed) Psychiatric Reports for Legal Purposes in the United Kingdom. In: J. Gunn and P.J. Taylor (eds) **Forensic Psychiatry: clinical, legal and ethical issues.** Oxford: Butterworth Heinemann pp 826-856.

Watson, W. and Grounds, A.T. (1993) (eds) **The Mentally Disordered Offender in an Era of Community Care.** Cambridge: Cambridge University Press.

Dell,S. Robertson, G. James, K. and Grounds, A. (1993) Remands and Psychiatric Assessments in Holloway Prison. I: The psychotic population. **The British Journal of Psychiatry 163** 634-640.

Dell,S. Robertson, G. James, K. and Grounds, A. (1993) Remands and Psychiatric Assessments in Holloway Prison. II: The non-psychotic population. **The British Journal of Psychiatry 163** 640-644.

Robertson, G. Dell, S. James, K. and Grounds, A. (1994) Psychotic Men Remanded in Custody to Brixton Prison. **The British Journal of Psychiatry 164** 55-61.

Robertson, G. Grounds, A. Dell, S. and James, K. (1994) A Follow-up of Remanded Mentally Ill Offenders Given Court Hospital Orders. **Medicine, Science and the Law** 34 61-66.

Grounds, A.T. (1994) Mentally Disordered Prisoners. In: E. Player and M. Jenkins (eds) **Prisons after Woolf: reform through riot.** London: Routledge pp 178-189.

Dell, S. and Grounds, A.T. (1994) **The Supervision of Conditionally Discharged Restricted Patients: Report to the Home Office.**

Grounds A.T. (1995) Risk Assessment and Management in Clinical Context. In: J Crighton (ed)

Psychiatric Patient Violence: risk and response. London: Duckworth pp 43-69.

Grounds, A.T. (1995) The Criminal Justice System. In: D. Chiswick and R. Cope (eds) **Seminars in Practical Forensic Psychiatry.** London: Gaskell pp 87-105.

Dowson J H and Grounds A T (1995) **Personality Disorder: Recognition and Management.** Cambridge: Cambridge University Press.

Grounds A.T. (1996) Expectations and Ethics. In: C Cordess and Cox M (eds) **Forensic Psychotherapy: Crime, Psychodynamics and the Offender Patient (Vol II).** London: Jessica Kingsley pp 7-15

Blom Cooper L., Grounds A.T., Gulnan P., Parker A., and Taylor M. (1996) **The Case of Jason Mitchell: Report of the Independent Panel of Inquiry.** London: Duckworth.

Grounds A.T. (1996) Forensic Psychiatry for the Millennium. **The Journal of Forensic Psychiatry 7 221-227**

Grounds A.T. (1997) Commentary on 'Inquiries: Who needs Them? by Matt Muijen. **Psychiatric Bulletin**

Grounds A.T. (1997) Response to Dr Christopher Cordess' paper 'Psychoanalysis and psychiatry - the case of forensic psychiatry' **Bulletin of the British Psycho-Analytical Society 21 134-135**

Dowson J.H., Sussams P. and Grounds A.T. (1997) Characteristics of In-patients without Psychosis. **Psychiatric Bulletin 21 553-555.**

Fryers T., Brugha T., Grounds A.T. and Melzer M. (1998) Severe Mental Illness in Prisoners. (Editorial) **British Medical Journal 317 1025-1026.**

Solomka B. and Grounds A.T. (1998) Legal Aspects of Memory Disorders. In: G.E.Berrios and J.H.Hodges (Eds) **Memory Complaints & Disorders: The Neuropsychiatric Perspective.** Cambridge: Cambridge University Press. pp 479-496.

Grounds A.T. (2000) Treatment Approaches with Mentally Disordered Offenders. In: J. McGuire, T. Mason and A. O'Kane (Eds) **Behaviour, Crime and Legal Processes.** Chichester: John Wiley & Sons. pp 281-288.

Grounds A.T. (2000) The Future of Prison Health Care. **The Journal of Forensic Psychiatry 11 260-267.**

Grounds A.T. (2000) The Psychiatrist in Court. In: M. Gelder, J.J. Lopez-Ibor and N.C. Andreasen (Eds) **New Oxford Textbook of Psychiatry.** Oxford: Oxford University Press. (in press).